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Rm. Ar. Ar. Rm. Ar. RAMANATHAN CHETTIAR

v.

COMMISSIONER OF INCOME-TAX, MADRAS

October 27, 1966

B [J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Income-tax Act (11 *of* 1922), *s.* 4(3)(*vii*)—*Interest under decree—Whether capital receipt or income of a recurring nature—Casual receipt—What is—Jurisdiction of High Court hearing reference under s.* 65—*Limits.*

On the death of two male members of a family which owned extensive properties in India and Ceylon, disputes arose between their widows and
C a suit was filed for partition of the estate. When each of the two members died, the Estate Duty Authorities of Ceylon levied estate duty. The receivers appointed in the partition suit paid the estate duties under protest and filed a suit questioning the validity of the duties. The suit was dismissed by the trial Court but was decreed by the Supreme Court of Ceylon on appeal. In consequence of the decision of the Supreme Court of Ceylon, confirmed by the Judicial Committee, the Estate Duty Authorities had to refund the estate duty collected with interest thereon. The parti-
D tion suit ended in a compromise and the assessee (the appellant's branch of the family) took one third share of the estate. For the assessment year 1958-59, the total income of the assessee was assessed and it included the amount received by the assessee as its share of the interest paid by the Estate Duty authorities of Ceylon. The assessee objected to the inclusion of that amount, but the Department, the Appellate Tribunal and the High Court on a reference, held against the assessee.

E In appeal to this Court,

HELD : (1) The interest paid to the assessee under the decree of the Supreme Court of Ceylon on the amount of estate duty directed to be refunded was income liable to be taxed under the Indian Income-tax Act, and there is no warrant for treating the amount as a capital receipt being in the nature of damages for wrongful retention of money. The Supreme Court of Ceylon ordered the refund of the estate duty with legal interest thereon, under s. 192 of the Ceylon Ordinance II of 1889, and the ex-
F pression "interest" in that section should be given its natural meaning. [969 E, F; 970 B]

Dr. Shamlal Narula v. *C.I.T., Punjab* [1964] 7 S.C.R. 668, followed.

(2) The receipt was not of a casual or non-recurring nature

(i) It is true that the assessee received the amount as a lump-sum payment. But that does not mean, that the receipt is not of a recurring
G nature. The interest was granted under the decree of the Court from the date of institution of the proceedings in the trial court and was calculated upon the footing that it accrued *de die in diem* and hence has the essential quality of recurrence which is sufficient to bring it within the scope of the Act. [971 F-H]

(ii) A receipt of interest which is foreseen and anticipated cannot be regarded as casual even if it not likely to recur again. When the action was commenced it was well within the contemplation and anticipation of
H the receivers-plaintiffs that a successful termination of the action would not merely result in a decree for the estate duty illegally collected, but would also make the defendants liable to pay interest on that amount. [972 A-B]

(3) It is of the essence of the jurisdiction of the High Court under s. 66 of the Act, that in hearing a reference, it can decide only questions which are referred to it or arise out of the order of the Tribunal. [972 H]

C.I.T., Bombay v. *Scindia Steam Navigation Co. Ltd.* [1962] 1 S.C.R. 788, followed

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 728 of 1965.

Appeal by special leave from the judgment and order dated September 24, 1962 of the Madras High Court in T.C. No. 144 of 1960.

A.K. Sen and *R. Ganapathy Iyer*, for the appellant.

B. Sen, A.N. Kirpal and *R.N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

Ramaswami J. This appeal is brought by special leave on behalf of Ramanathan Chettiar (herinafter called the 'assessee') from the judgment of the High Court of Madras dated September 24, 1962 in T.C. No. 144 of 1960.

Arunachalam Chettiar (senior) was a resident of Devakottai, Ramanathapuram District who owned extensive properties including properties in Ceylon. He married three wives *viz.*, Valami Achi, Lakshimi Achi and Nachiar Achi. Valami Achi died in 1913 leaving behind her a son Arunachalam Chettiar (junior) and three daughters. Lakshimi Achi and Nachiar Achi did not have natural born sons. Arunachalam Chettiar (junior) died on July 9, 1934. Arunachalam Chettiar (senior) died on February 23, 1938. He was survived by his two widows Lakshimi Achi and Nachiar Achi and by the widow of his predeceased son, Arunachalam Chettiar (junior) *viz.*, Umayal Achi. After the death of Arunachalam Chettiar (senior) disputes arose between his two widows and the widow of Arunachalam Chettiar (junior) Umayal Achi, in respect of the estate of Arunachalam Chettiar (senior). Umayal Achi filed O.S. No. 93 of 1938 in the Subordinate Judge's Court of Devakottai for administration and partition of the estate of deceased Arunachalam Chettiar (senior). She claimed a half-share in the properties under the provisions of the Hindu Women's Rights to Property Act. During the pendency of the suit the Subordinate Judge appointed two Advocates as Receivers for the administration of the estate. On the death of Arunachalam Chettiar (junior) the Estate Duty Authorities of Ceylon levied Estate Duty on what was described as the "deceased's half share of the assets of the business carried on by the family in Ceylon". Estate Duty was also levied on the death of Arunachalam Chettiar (senior) in 1938. The two Advocate Receivers who were administering the estate paid under protest to the Commissioner of Estate Duty in

A Ceylon the Estate Duty claimed from them. The administrators subsequently filed a suit in the court of the District Judge, Colombo questioning the validity of the Estate Duties. The District Judge upheld the levies, but the Supreme Court of Ceylon allowed the appeal of the administrators and ordered the refund of the Estate Duty together with interest. The Attorney-General of Ceylon B took the matter in appeal to the Judicial Committee in P.C.A. Nos. 16 and 17 of 1955. By its judgment dated July 10, 1957 the Judicial Committee affirmed the Judgment of the Supreme Court of Ceylon and dismissed the appeals. In consequence of this decision the Estate Duty Authorities of Ceylon had to refund a sum of Rs. 7,97,072/- as interest payable on the amount of Estate C Duty formerly collected. Meanwhile, the litigation in O.S. 93 of 1938 filed in the Subordinate Judge's Court of Devakottai had also reached the Judicial Committee and at that stage the parties compromised. In pursuance of this compromise the two widows of Arunachalam Chettiar (senior) took a boy each in adoption on June 17, 1945, Lakshmi Achi taking in adoption one Arunachalam Chettiar and Nachiar Achi taking in adoption one Ramanathan D Chettiar. The widow of Arunachalam Chettiar (junior) Umayal Achi also adopted a son to her deceased husband, a boy called Veerappa Chettiar on June 17, 1945. The estate was divided into three equal shares, Lakshimi Achi and her adopted son taking one-third share Nachiar Achi and her adopted son taking another one-third share, and Umayal Achi and her adopted son Veerappa E taking the balance of one-third share.

Ramanathan, the adopted son of Arunachalam Chettiar (senior) taken in adoption by Nachiar Achi was assessed to income-tax for the assessment year 1958-59, the relevant previous year being the year ending March 31, 1958. He was assessed in the status of a Hindu undivided family on a total income of Rs. F 2,53,828/- and a total tax of Rs. 1,79,412·12 nP was levied. The assessment included a sum of Rs. 1,93,328/- which was received by the assessee as his share of the amount of interest paid by the Estate Duty Authorities of Ceylon consequent to the judgment of the Supreme Court of Ceylon ordering the refund of the amount. The assessee objected to the inclusion of this amount on the ground G that it was not a revenue receipt assessable to income-tax and that, in any event, the receipt was of a casual and non-recurring nature falling within the exemption under s. 4(3) (vii) of the Indian Income-tax Act, 1922 (hereinafter referred to as the 'Act'). The Income-tax Officer overruled the objection and his order was affirmed in appeal by the Appellate Assistant Commissioner and by the appellate H Tribunal. Before the appellate Tribunal the assessee contended that the amount of Rs. 1,93,328/- received from the Estate Duty Authorities, Ceylon was not income, but was only damages received for the unlawful retention of money, and even assuming that

it was a revenue receipt, it was of a casual and non-recurring nature and, therefore, was not liable to assessment. The contentions of the assessee were over-ruled by the appellate Tribunal. At the instance of the assessee the appellate Tribunal referred the following questions of law to the High Court :

"1. Whether the aforesaid interest receipt constitutes income ?

2. If so, whether it is exempt under s. 4(3) (vii) of the Income-tax Act as a receipt of a casual and non-recurring nature ?"

By its judgment dated September 24, 1962 the High Court answered the Reference against the assessee and held that the receipt in question was a revenue receipt and could not be held to be receipt of a casual and non-recurring nature and the amount was rightly assessed in the year of assessment.

The first question to be considered in this appeal is whether the amount of Rs. 1,93,328/- received by the assessee as his one-third share of the amount of interest paid by the Estate Duty Authorities of Ceylon can be taxed as income. It was contended on behalf of the appellant that the amount constituted damages for unlawful retention of money by the Estate Duty Authorities of Ceylon and the amount received by the assessee was therefore capital receipt. We do not think there is any justification for this argument. The amount was paid by the Ceylon Estate Duty Authorities under the judgment and decree of the Supreme Court of Ceylon the relevant portion of which reads as follows :

"I would therefore, set aside the order under appeal and substitute a decree (a) declaring that no Estate Duty was payable under Estate Duty Ordinance (Cap. 187) in respect of the estate of Arunachalam Chettiar (Senior) and (b) ordering the Crown to refund to the appellants the sum of Rs. 7,00,402.65 with legal interest thereon from the date on which these proceedings were instituted in the District Court. The appellants are also entitled to their costs in this court and in the court below".

Under the provisions of the Estate Duty Act of Ceylon, as it stood at the material time, any person aggrieved by the assessment of estate duty could appeal to the appropriate District Court naming the Attorney-General as the respondent. After the Attorney-General is served in the matter the appeal is proceeded with as an action between the assessee as plaintiff and the Crown as defendant. The statute specifically provides that the provisions of the Civil Procedure Code and of the Stamp Ordinance shall apply to the proceeding. The petition of appeal should be stamped as though

A it were a plaint filed for the purpose of originating the action, and if it is not stamped with the requisite stamps it may be dealt with in the same manner as if it is a plaint which is insufficiently stamped. Any party aggrieved by any decree or order of the District Court may further appeal to the Supreme Court in accordance with the provisions of the Civil Procedure Code. The relevant provision
B under the Ceylon Civil Procedure Code empowering the Court to award interest is contained in s. 192 of Ordinance II of 1889 which is to the following effect:

> "When the action is for a sum of money due to the plaintiff, the Court may in the decree order interest according to the rate agreed on between the parties by the instrument
C sued on, or in the absence of any such agreement at the rate of nine per cent per annum to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudg-
D ed from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit....."

This provision corresponds to s. 34 of the Civil Procedure Code in India. Section 192 of the Ceylon Ordinance II of 1889 expressly uses the word 'interest' in contrast to 'principal sum adjudged' and we do not see any reason why the expression should not be given
E the natural meaning it bears. In its judgment dated October 12, 1953, the Supreme Court of Ceylon acted under this section and ordered the Crown to refund to the appellant the sum of Rs. 7,00,402·65 with legal interest thereon from the date of the institution of the proceedings in the District Court. We see no warrant for accepting the submission of the appellant that the interest awarded
F by the Supreme Court of Ceylon under s. 192 of Ordinance II of 1889 should be taken to be a capital receipt being in the nature of damages for wrongful retention of money. In *Westminster Bank, Ltd.* v. *Riches*,(1) the question at issue was whether the amount of interest awarded by the Court in exercise of its discretionary power under s. 3 of the Law Reform (Miscellaneous Provisions) Act,
G 1934 was 'interest of money' within the meaning of Sch. 'D' and General Rule 21 of the Income-tax Act, 1918 and whether income-tax was accordingly deductible therefrom. It was contended in that case on behalf of the respondent that the amount though awarded under a power to add interest to the amount of debt and though called interest in the judgment, was not really interest such as attracts income-tax but was damages. This argument was
H rejected by the House of Lords and it was held that there was no incompatibility between the two conceptions and that the amount

(1) 28 T.C. 159.

was taxable as interest of money within Sch. 'D' and General Rule 21 of the Income-tax Act, 1918. It was pointed out that the real question in cases of this type was not whether the amount received was interest proper or damages but whether it had the quality of income or it was a capital sum estimated in terms of interest. In the course of his judgment, Lord Wright observed at page 189 of the Report as follows:

> "The contention of the Appellant may be summarily stated to be that the award under the Act cannot be held to be interest in the true sense of that word because it is not interest but damages, that is, damages for the detention of a sum of money due by the Respondent to the Appellant, and hence the deduction made as being required under Rule 21 is not justified because the money was not interest. In other words the contention is that money awarded as damages for the detention of money is not interest and has not the quality of interest. Evershed, J., in his admirable judgment, rejected that distinction. The Appellant's contention is in any case artificial and is, in my opinion, erroneous, because, the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether the money was due for any other reason in law. In either case the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute, as for instance under section 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The essential quality of the claim for compensation is the same, and the compensation is properly described as interest."

This passage was quoted with approval by this Court in *Dr. Shamlal Narula* v. *Commissioner of Income-tax Punjab, Jammu & Kashmir, Himachal Pradesh and Patiala*(1) in which a question arose whether the statutory interest paid under s. 34 of the Land Acquisition Act, 1894, on the amount of compensation awarded for the period from the date the Collector has taken possession of land compulsorily

(1) 1964] 7 S.C.R. 668 : 53 I.T.R. 151.

A acquired is interest paid for the delayed payment of the compensation and is therefore a revenue receipt liable to tax under the Act. It was held that the amount was not compensation for land acquired or for depriving the claimant of his right to possession but was paid to the claimant for the use of his money by the State and the statutory interest paid was, therefore, a revenue receipt liable to income-
B tax. The principle of this decision applies to the present case also and we are of opinion that the interest paid to the assessee under the decree of the Supreme Court of Ceylon on the amount of Estate Duty directed to be refunded was income liable to be taxed under the Act.

C We shall proceed to consider the next question whether the receipt of interest, even if it constituted income, was exempt under s. 4(3) (vii) of the Act as receipt of a casual and non-recurring nature. Section 4(3)(vii) of the Act is in the following terms:

> "4. (3). Any income, profits or gains falling
> D within the following classes shall not be included in the total income of the person receiving them:
>
> . . . . . .
>
> (vii) Any receipts not being capital gains chargeable
> E according to the provisions of section 12B and not being receipts arising from business or the exercise of a profession vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee."

F It was argued on behalf of the appellant that the amount in question was a lump-sum payment awarded under the decree of the Court and there was no quality of recurrence about it. We do not think that this submission is correct. It is true that the appellant received lump-sum payment on account of interest. That does not, however, necessarily mean that the amount of interest is not a receipt
G of a recurring nature. On the other hand, the interest was granted under the decree of the Court from the date of the institution of the proceedings in the District Court and was calculated upon the footing that it accrued *de die in diem*, and hence it has the essential quality of recurrence which is sufficient to bring it within the scope of the Act. It was also contended that the receipt
H of interest was casual in its character. The expression 'casual' has not been defined in the Act and must therefore be construed in its plain and ordinary sense. According to the Shorter Oxford English Dictionary the word 'casual' is defined to mean:

"(i) Subject to or produced by chance; accidental, fortuitous, (ii) Coming at uncertain times; not to be calculated on, unsettled". A receipt of interest which is forseen and anticipated cannot be regarded as casual even if it is not likely to recur again. When the action was commenced by way of a petition in the District Court of Ceylon, it was well within the contemplation and anticipation of the persons representing the estate that a successful termination of the action would not merely result in a decree for the tax illegally collected, but would also make the Crown liable to pay interest on that amount from the date of the petition till the date of the payment. The receipt of interest in the present case by virtue of the decree of the Supreme Court of Ceylon bears no semblance, therefore, to a receipt of a casual character. It is not therefore possible to accept the argument of the appellant that the receipt of interest obtained under the decree of the Supreme Court of Ceylon was of a casual or non-recurring nature. We accordingly reject the submission of the appellant on this aspect of the case.

It was lastly submitted on behalf of the appellant that the payment of interest under the decree of the Supreme Court of Ceylon was made by the Ceylon Estate Duty Authorities to the estate of Arunachalam Chettiar (senior) and what was received by the appellant for his one-third share, namely, Rs. 1,93,328/- was a share in the estate of the deceased and therefore was received by the appellant as part of the estate. In other words, the contention of the appellant was that the receipt was a capital receipt and was not assessable in his hands. It is not, however, open to the appellant to advance this argument at this stage because the question did not arise out of the order of the Tribunal and no such question was referred by the appellate Tribunal for the decision of the High Court. Mr. A. K. Sen for the appellant also referred to the decision of the Madras High Court in *Commissioner of Revenue, Madras* v. *Veerappa Chettiar*(1) which dealt with a share of the same income by another branch of the family. It was decided by the Madras High Court in that case that the receipt of interest prior to February 17, 1947 should be regarded as capital and the rest should be regarded as income receipt. But the question of the disruption of the status of joint family on February 17, 1947 and the effect of that disruption upon the character of the interest receipt was never raised before the appellate Tribunal and was not decided by it in the appeal before us. In *Commissioner of Income-tax, Bombay* v. *Scindia Steam Navigation Co. Ltd.*(2) it was pointed out by this Court that in hearing a reference under s. 66 of the Act the High Court acts purely in an advisory capacity, and it is of the essence of such a jurisdiction that the court can decide only questions which are referred to it and not any other questions. In the present case, the High Court has rightly

(1) 61 I.T.R.256. (2) [1962] 1 S.C.R. 788 : 42 I.T.R. 589.

A pointed out that the question did not arise out of the order of the Tribunal and was not the subject-matter of reference to the High Court.

For the reasons already expressed we hold that the judgment of the High Court is right and this appeal must be dismissed with costs.

B V.P.S. *Appeal dismissed.*