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K. GEORGE THOMAS

v.

COMMISSIONER OF INCOME-TAX, KERALA

APRIL 30, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

B

Income Tax Act, 1961, s. 10(3)/Income Tax Act, 1922 s. 4(3) (vii) - Business income - Receipts from abroad - Whether of casual or non-recurring nature - Whether assessable as business income.

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The appellant is assessed to income tax in the status of an individual. He runs a printing press and a daily language newspaper. For the year 1962-63, he filed a return of income showing a loss. The Income-tax Officer discovered that various remittances from abroad had been received by the assessee as Vice-President of the India Gospel Mission. On an enquiry he

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found that a major part of the funds credited to the account maintained by the assessee in the name of the Mission had been turned over to the newspaper and a sizeable part of it had been utilised for his household expenses. He rejected the claim of the assessee that the newspaper had been taken over by the Mission or that the drawings from the account, on which

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no interest had been charged, constituted loans taken by him in his individual capacity to be repaid in subsequent years, and being of the view that the remittances had been made to the assessee entirely because of his business and personal activities and that the funds of the Mission and the newspaper had all been mixed up and treated together as one unit, and

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the assessee had been operating upon all these funds as the individual owner of both the newspaper and the funds, held that the entire receipts of cash from abroad were relatable to the business activities of the assessee and were assessable to tax as his income.

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The Appellate Assistant Commissioner allowing the assessee's appeal observed that the amounts withdrawn from the funds were merely loans repayable by the assessee to the Mission, without however recording any definite finding on that question or as to whether the remittances constituted income of the assessee.

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The Appellate Tribunal confirmed this order in appeal by the Revenue holding that the receipts did not constitute income of the assessee.

The High Court, following its decision in **C.I.T. v. Dr. K. George Thomas**, [1974] 94 I.T.R., 11, answered the Reference in favour of the Revenue and against the assessee holding that the amount was assessable as the income of the assessee.

Similar questions were raised in Appeal Nos. 2918 and 2919 of 1977 in respect of the assessment years 1963-64 and 1964-65 respectively, and Appeal No. 2917 of 1977 assailed the legality and correctness of the levy of penalty for not having submitted a return for the assessment year 1962-63, but no separate submissions were made in those appeals.

Dismissing the appeals by certificate, the Court,

HELD: 1. The receipts cannot be regarded as of casual and non-recurring nature not arising from the assessee's business or the exercise of his profession or occupation within the meaning of s. 10(3) of the Income Tax Act, 1961 for the reasons set forth in **Dr. K. George Thomas v. C.I.T. Kerala**, [1985] 156 I.T.R. 412 and are assessable to tax as the assessee's income. [879 G-H]

P. Krishna Menon v. Commissioner of Income-tax, [1959] 35 I.T.R. 48, referred to.

The distinction sought to be drawn between the case for the assessment year 1960-61 and 1961-62 and the case for the assessment year 1962-63 on the factum that in the former the remittances were entered in the personal name of the assessee while in the latter the remittances have been shown in a separate account standing in the name of the India Gospel Mission is wholly without substance. [879 D-E]

In the instant case, the assessee had treated both the accounts as his personal accounts from which heavy drawings were made from time to time entirely for his personal objectives. The drawings from the account in the name of the Mission did not constitute loans. The assessee had treated that account as an intimate part of his personal funds. [879 E-G]

A CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2916 of 1977.

From the Judgment and Order dated 3.2.1977 of the Kerala High Court in I.T.R. Case Nos. 22 to 25 of 1975.

Devi Pal, Ms. A.K. Verma and Sukumaran for the B Appellant.

K.C. Dua and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

C **PATHAK, J.** These appeals by certificate granted by the Kerala High Court and directed against the judgment of that High Court answering the questions referred to it by the Income-tax Appellate Tribunal in favour of the Revenue and against the appellant.

D The assessee, who is the appellant before us, is assessed to income-tax in the status of an individual. He runs a printing press known as 'Kerala Dwani' and also a Malayalam daily newspaper of the same name. For the assessment year 1962-63, he filed a return of income showing a loss of Rs.3,37,183. The Income-tax Officer found that various E remittances from the United States of America had been received by him, ostensibly in his capacity as Vice-President of the India Gospel Mission. The assessee maintained two bank accounts with the Indian Overseas Bank, Kottayam. One account was in the name of the assessee and the other in the name of the India Gospel Mission. A credit of Rs.5,85,637 appeared in F the account of the India Gospel Mission. The Income-tax Officer enquired into the utilisation of the funds credited in that account, and on examination of the material before him he found that the major part of the funds had been turned over to the newspaper 'Kerala Dwani' and a sizeable part had been utilised for household expenses by the assessee, such as the G purchase of a cow, payment of house rent of his father, personal trips to Bombay, purchase of property by the assessee, and providing loan facilities to the assessee's close relatives including his father, brothers and others without interest. The personal expenses met from out of these

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funds and the amount utilised for the purchase of properties in the name of the assessee and his five brothers were claimed by the assessee as representing loans taken by him in his individual capacity to be repaid in subsequent years. The Income-tax Officer found that no interest had been charged on those drawings and that the account showed that the assessee had been operating on those funds in his complete discretion without regard to any stipulated principles or directions. He found that the purchases and the advances made for the purchase of properties found a place in the Balance Sheet prepared for the India Gospel Mission. He rejected the claim of the assessee that the newspaper, 'Kerala Dwani' had been taken over by the India Gospel Mission and that the assessee had nothing to do with it. He found that the statutory declarations required to be published by the newspaper annually showed that the assessee in his individual capacity was the owner of the press and the newspaper, and that no where was the India Gospel Mission shown as having any connection with them as such or through him as Vice-President of the India Gospel Mission. The Income-tax Officer came to the conclusion that on the examination of the entire material it was clear that the funds had been received mostly for assisting the assessee in running the newspaper, and that funds of the India Gospel Mission and the newspaper 'Kerala Dwani' had all been mixed up and treated together as one unit and the assessee had been operating upon all these funds as the individual owner of both the newspaper and the funds. The Income-tax Officer observed that the remittances had been made to the assessee entirely because of his business activities and had been utilised by him for his business and personal activities. He held that the entire receipts of cash from the United States of America were relatable to the business activities of the assessee and were assessable to tax as the assessee's income. He rejected the explanation of the assessee that the drawings constituted loans taken from himself in his personal capacity and paid to himself as Vice-President of the India Gospel Mission. Following the decision in **P. Krishna Menon v. Commissioner of Income-tax,** [1959] 35 I.T.R. 48 he brought the amount of Rs.5
India Gospel Missi n t ta as the in

On appeal by the assessee, the Appellate Assistant

A Commissioner observed that the amounts withdrawn from the funds were merely loans repayable by the assessee to the India Gospel Mission but no definite finding was given on that question nor did he render any finding on the question whether the receipt of Rs. 5,85,637 in the name of the India Gospel Mission constituted the income of the assessee. The Appellate Assistant Commissioner relied essentially on an earlier order B made by the Income Tax Appellate Tribunal in the appeals arising out of the assessments made for the assessment years 1960-61 and 1961-62, in which years similar remittances to the assessee had been held by the Appellate Tribunal to be not taxable.

C The Income-tax Officer appealed to the Income-tax Appellate Tribunal, and the Appelllate Tribunal dismissed the appeal because it preferred to follow its earlier order relating to the assessment years 1960-61 and 1961-62 wherein it had held that the receipts from abroad did not constitute the income of the assessee, and that even if they were assumed D to constitute his income they were receipts of a casual and non-recurring nature not arising from business or the exercise of a profession or occupation and, therefore, not taxable.

At the instance of the Revenue the Appellate Tribunal referred the following two questions to the High Court of E Kerala for its opinion :

> "(1) Whether, on the facts and circumstances of the case, the Tribunal was right in finding that the amount of Rs. 5,85,637 assessed by the Income-tax Officer was not assessable as the income for the F assessment year 1962-63?
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> (2) Whether, on the facts and circumstances of the case, the Tribunal was right in finding that the amount of Rs. 5,85,637 are receipts of a casual and non-recurring nature not arising from business or G the exercise of a profession or occupation within the meaning of section 10(3) of the Income-tax Act, 1961?"

This reference was numbered as Reference No. 22 of 1975 in the High Court.

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By its judgment dated February 3, 1977, the High Court held that the amount of Rs. 5,85,637 was assessable as the income of the assessee for the assessment year 1962-63 and that the receipts were not of a casual and non-recurring nature. A reference made to the High Court against the order of the Appellate Tribunal for the assessment years 1960-61 and 1961-62, of which mention has been made earlier, had already been answered by the High Court in favour of the Revenue and against the assessee. That judgment has been reported as **Commissioner of Income-tax v. Dr. K. George Thomas,** [1974] 97 I.T.R. 111. We may point out that that judgment of the High Court was brought in appeal to this Court and was upheld by a Division Bench of this Court, of which one of us (Sabyasachi Mukharji, J) was a member, and the judgment of this Court has since been reported in **Dr. K. George Thomas v. Commissioner of Income Tax, Kerala,** [1985] 156 I.T.R. 412. Upon that it is clear that the basis on which the Appellate Tribunal proceeded to decide the case in favour of the assessee stands displaced. Learned counsel for the assessee contends, however, that there is a material difference between the case for the assessment years 1960-61 and 1961-62 and the case for the assessment year 1962-63 inasmuch as in the former case the remittances were entered in the personal name of the assessee while in the present case the remittances have been shown in a separate account standing in the name of the India Gospel Mission. To our mind the distinction sought to be drawn is wholly without substance, having regard to the overwhelming material on the record showing that the assessee had treated both the accounts as his personal accounts from which heavy drawings were made from time to time entirely for his personal objectives. The case that the drawings from the account in the name of the India Gospel Mission constituted loans is not supported by the evidence on the record, and it is clear that the entire fund was treated as an intimate part of the assessee's personal funds. That being so, the High Court is plainly right in holding that the amount of Rs. 5,85,637 is assessable as the income of the assessee for the assessment year 1962-63. It is also apparent that the receipts cannot be regarded as of casual and non-recurring nature not arising from the assessee's bussiness or the exercise of his profession or occupation within the meaning of s. 10(3) of the Income-tax Act. The decision of this Court in **P. Krishna Menon** (supra) supports that conclusion. Indeed both the questions arising

A before us for the assessment year 1962-63 were, as we have mentioned earlier, examined by this Court on corresponding facts relating to the assessment years 1960-61 and 1961-62, and we cannot do better than adopt the reasons set forth in that judgment in this case. This appeal, therefore, fails.

The other appeals before us arising out of Reference No. B 23 of 1975 raise the question of the legality and correctness of the levy of penalty on the assessee for not having submitted a return for the assessment year 1962-63, and Reference No. 24 of 1975 and Reference No. 25 of 1975 which raise similar questions for the assessment year 1963-64 and 1964-65 respectively as in the Reference we have dealt with C above. No separate submissions have been made by learned counsel for the assessee on these appeals and they must also fail.

In the result the appeals are dismissed with costs.

P.S.S. Appeals dismissed.