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July 27.

THE COMMISSIONER OF INCOME-TAX, PUNJAB

v.

SHRI THAKUR DAS BHARGAVA, ADVOCATE, HISSAR.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Professional income—Lawyer accepting case on condition of clients' paying money for charity—Money paid to lawyer and charitable trust created—Whether amount received is professional income.

The assessee, an advocate, accepted a case on condition that the clients would provide him with Rs. 40,000 for charitable purposes and that he would create a public charitable trust with the money. The clients gave the assessee Rs. 32,500 and he created a trust therewith. The assessee claimed that the said amount of Rs. 32,500 was not his professional income as the amount had been given to him in trust for charity.

Held, that the said amount was the professional income of the assessee and was liable to income-tax. At the time when this money was paid to the assessee no trust or obligation in the nature of trust was created. The clients who paid the money did not create any trust nor imposed any legally enforceable obligation on the assessee. The money when it was received by the assessee was his professional income though he had expressed a desire earlier to create a charitable trust out of the money when received. The assessee's own voluntary desire to create a trust out of the fees paid to him did not create a trust or a legally enforceable obligation.

Raja Bejoy Singh Dudhuria v. *Commissioner of Income Tax, Bengal*, [1933] 1 I.T.R. 135, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 236 of 1955.

Appeal from the judgment and order dated August 3, 1953, of the Punjab High Court in Civil Reference No. 7/1952.

M. C. Setalvad, Attorney-General for India, K. N. Rajagopal Sastri and *D. Gupta*, for the appellant.

N. C. Chatterjee and *S. K. Sekhri*, for the respondent.

1960. July 27. The Judgment of the Court was delivered by

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S. K. DAS J.—This is an appeal on a certificate of fitness granted under the provisions of sub-s. 2 of s. 66A of the Indian Income-tax Act, 1922, by the High Court of Judicature for the State of Punjab then sitting at Simla. The certificate is dated December 28, 1953, and was granted on an application made by the Commissioner of Income-tax, Punjab, appellant herein. The relevant facts are shortly stated below.

For the assesment year 1946-47, one Pandit Thakurdas Bhargava, an advocate of Hissar and respondent before us, was assessed to income tax on a total assessable income of Rs. 58,475/- in the account year 1945-46. This sum included the amount of Rs. 32,500/- stated to have been received by the respondent in July, 1945 for defending the accused persons in a case known as the Farrukhnagar case. The assessee claimed that the said amount of Rs. 32,500/- was not a part of his professional income, because the amount was given to him in trust for charity. This claim of the assessee was not accepted by the Income-tax Officer, nor by the Appellate Assistant Commissioner who heard the appeal from the order of the Income-tax Officer. Both these officers held that the assessee had received the amount of Rs. 32,500/- as his professional income and the trust which the assessee later created by a deed of Trust dated August 6, 1945, did not change the nature or character of the receipt as professional income of the assessee; they further held that the persons who paid the money to the assessee did not create any trust nor impose any obligation in the nature of a trust binding on the assessee, and in fact and law the trust was created by the assessee himself out of his professional income; therefore, the amount attracted tax as soon as it was received by the assessee as his professional income, and its future destination or application was irrelevant for taxing purposes. From the order of the Appellate Assistant Commissioner a further appeal was carried to the Income-tax Appellate Tribunal, Delhi Branch. We shall presently state the facts which the Tribunal found, but its conclusion drawn from the facts found was expressed in the following words: "The income in this case did not at

any stage arise to the assessee. Keeping in mind the express stipulation made by the assessee when he accepted the brief there was a voluntary trust created, which had to be and was subsequently reduced into writing after the money was subscribed. The payments received from the accused and other persons were received on behalf of the trust and not by the assessee in his capacity as an individual. In this view, we delete the sum of Rs. 32,500/- from the assessment."

The appellant then moved the Tribunal for stating a case to the High Court on the question of law which arose out of the order of the Tribunal. The Tribunal was of the opinion that a question of law did arise out of its order, and this question it formulated in the following terms:

"Whether the sum of Rs. 32,500/- received by the assessee in the circumstances set out in the trust deed later executed by him on August 6, 1945, was his professional income taxable in his hands, or was it money received by him on behalf of a trust and not in his capacity as an individual."

It appears that in stating a case the Tribunal framed an additional question as to whether the trust was created at or before the payment of Rs. 32,500/-, but expressed the view that this additional question was implicit in the principal question formulated by it. A case was accordingly stated to the High Court under s. 66 of the Indian Income-tax Act, and the High Court by its judgment dated August 3, 1953, answered the question in favour of the assessee, holding that "the sum of Rs. 32,500/- received by the assessee was not received by him as his professional income but was received on behalf of the trust and not in his capacity as an individual". The appellant then moved the High Court and obtained the certificate of fitness referred to earlier in this judment.

We shall presently state the facts found by the Tribunal in connection with the receipt of the sum of Rs. 32,500/- by the assessee, from which the Tribunal drew its inference. But the question as framed by the Tribunal and answered by the High Court, was

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whether in the circumstances set out in the trust deed dated August 6, 1945, the amount of Rs. 32,500/- received by the assessee was professional income in his hand. It is, therefore, appropriate to refer first to the recitals in the trust deed. The respondent stated in the trust deed that he had "decreased" his legal practice for the last few years and had reserved his professional income accruing after June 1944 for payment of taxes and charity. He then said: "accordingly, I have been acting on that. In the Farrukhnagar, district Gurgaon case, *Crown* v. *Chuttan Lal etc.*, the relatives and the accused expressed a strong desire to get the case conducted by me during its trial. At last on their persistence and promise that they would provide me with Rs. 40,000/- for charitable purposes and I would create a public charitable trust thereof I agreed to conduct the case. The case is now over. The accused and their relatives have given me Rs. 32,500/- for charity and creating a trust. The said amount has been deposited in the Bank. If they pay any other amount that will also be included in that. Accordingly, I create this trust with the following conditions and with the said amount and any other amount which may be realized afterwards or included in the trust;". (then followed the name and objects of the trust, etc.). The Tribunal accepted as correct the statements of the respondent that he was at first unwilling to accept the brief in the Farrukhnagar case; he was then persuaded to accept it at the request of some members of the Bar and some influential local people on the understanding, as the respondent put it, that the accused persons of that case would provide Rs. 40,000/- for a charitable trust which the respondent would create. Eventually, the sum of Rs. 32,500/- was paid by or on behalf of the accused persons, and as the Tribunal has put it, a charitable trust was created by the respondent by the trust deed dated August 6, 1945, the recitals whereof we have quoted above.

The question before us is what is the proper legal inference from the aforesaid facts found by the Tribunal. Both the Tribunal and the High Court have drawn the inference that a charitable trust was created

by the persons who paid the money to the assessee, and all that the assessee did under the deed of trust dated August 6, 1945, was to reduce the terms of the trust to writing. The High Court, therefore, applied the principle laid down by the Privy Council in *Raja Bejoy Singh Dudhuria* v. *Commissioner of Income-tax, Bengal* (1) and observed that by the overriding obligation imposed on the assessee by the persons who paid the money, the sum of Rs. 32,500/- never became the income of the assessee; and the amount became trust property as soon as it was paid, there being no question of the application of part of his income by the assessee.

On behalf of the appellant it has been contended that the inference which the Tribunal and the High Court drew is not the proper legal inference which flows from the facts found, and according to the learned Attorney-General who appeared for the appellant the proper legal inference is that the amount was received by the assessee as his professional income in respect of which he later created a trust by the deed of trust dated August 6, 1945. He has submitted that there was no trust nor any legal obligation imposed on the assessee by the persons who paid the money, at the time when the money was received, which prevented the amount from becoming the professional income of the assessee. He has also contended that even the existence of a trust will make no difference, unless it can be held that the money was diverted to that trust before it could become professional income in the hands of the assessee.

We think that the question raised in this case can be decided by a very short answer, and that answer is that from the facts found by the Tribunal the proper legal inference is that the sum of Rs. 32,500/- paid to the assessee was his professional income at the time when it was paid and no trust or obligation in the nature of a trust was created at that time, and when the assessee created a trust by the trust deed of August 6, 1945, he applied part of his professional income as trust property. If that is the true conclusion as we hold it to be, then the principle laid down

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by the Privy Council in *Bejoy Singh Dudhuria's case* (1) has no application. It is indeed true, as has been observed by the High Court, that a trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only " where the requisites of a trust are present, namely, where there are purposes independent of the donee to which the subject-matter of the gift is required to be applied and an obligation on the donee to satisfy those purposes." The findings of the Tribunal show clearly enough that the persons who paid the sum of Rs. 32,500/- did not use any words of an imperative nature creating a trust or an obligation. They were anxious to have the services of the assessee in the Farrukhnagar case; the assessee was at first unwilling to give his services and later he agreed proposing that he would himself create a charitable trust out of the money paid to him for defending the accused persons in the Farrukhnagar case. The position is clarified beyond any doubt by the statements made in the trust deed of August 6, 1945. The assessee said therein that he was reserving his professional income as an advocate accruing after June, 1944 for payments of taxes and charity and, accordingly, when he received his professional income in the Farrukhnagar case he created a charitable trust out of the money so received. The clear statement in the trust deed, a statement accepted as correct by the Tribunal, is that the assessee created a trust on certain conditions etc. It is not stated anywhere that the persons who paid the money created a trust or imposed a legally enforceable obligation on the assessee. Even in his affidavit the assessee had stated that " it was agreed that the accused would provide Rs. 40,000/- for a charitable trust which I would create in case I defend them, on an absolutely clear and express understanding that the money would not be used for any private and personal purposes." Even in this affidavit there is no suggestion that the persons who paid the money created the

(1) [1933] 1 I.T.R. 135.

trust or imposed any obligation on the assessee. It was the assessee's own voluntary desire that he would create a trust out of the fees paid to him for defending the accused persons in the Farrukhnagar case. Such a voluntary desire on the part of the assessee created no trust, nor did it give rise to any legally enforceable obligation. In the circumstances the Appellate Assistant Commissioner rightly pointed out that "if the accused persons had themselves resolved to create a charitable trust in memory of the professional aid rendered to them by the appellant and had made the assessee trustee for the money so paid to him for that purpose, it could, perhaps, be argued that the money paid was earmarked for charity *ab initio* but of this there was no indication anywhere". In our opinion the view taken by the Appellate Assistant Commissioner was the correct view. The money when it was received by the assessee was his professional income, though the assessee had expressed a desire earlier to create a charitable trust out of the money when received by him. Once it is held that the amount was received as his professional income, the assessee is clearly liable to pay tax thereon. In our opinion the correct answer to the question referred to the High Court is that the amount of Rs. 32,500/- received by the assessee was professional income taxable in his hands.

Learned Counsel for the respondent has referred us to a number of decisions where the principle laid down in *Bejoy Singh Dudhuria's Case* (1) was applied, and has contended that where there is an allocation of a sum out of revenue as a result of an overriding title or obligation before it becomes income in the hands of the assessee, the allocation may be the result of a decree of a court, an arbitration award or even the provisions of a will or deed. In view of the conclusion at which we have arrived, the decisions relied upon can hardly help and it is unnecessary to consider them. Our conclusion is that there was no overriding obligation imposed on the assessee at the time when the sum of Rs. 32,500/- was received by him.

(1) [1933] 1 I.T.R. 135.

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Accordingly, we allow this appeal and set aside the judgment and order of the High Court. The answer to the question is in favour of the appellant, namely, that the sum of Rs. 32,500/- received by the assessee was his professional income taxable in his hands. The appellant will be entitled to his costs throughout.

Appeal allowed.

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July 28.

THE STATE OF UTTAR PRADESH AND OTHERS

v.

RAJA SYED MOHAMMAD SAADAT ALI KHAN.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Agricultural Income-tax—Additional Collector—Power of Assessment—Amending Act giving retrospective effect to amended provisions—Provision for review in the amendment Act—If affects the powers of the appellate court—The United Provinces Agricultural Income-tax Act, 1949 (U. P. III of 1949)—United Provinces Land Revenue Act, 1901 (U.P. III of 1901).

The United Provinces Agricultural Income-tax Act, 1949, authorised imposition of a tax on agricultural income within the State, and the agricultural income-tax and super-tax were charged on the total agricultural income of the previous year of the assessee. For the purposes of the Act the Collector and the Assistant Collector were declared to be the assessing authorities within their respective revenue jurisdiction and the expression "Collector" was to have the same meaning as in the United Provinces Land Revenue Act, 1901. Under the rules framed by the government under s. 44 of the Act an assessee having agricultural income in the jurisdiction of more than one assessing authority was to be assessed by the Collector of the district in which he permanently resided. The State Government of Uttar Pradesh appointed Mr. K. C. Chaudhry under sub-s. 1 of s. 14(A) of the United Provinces Land Revenue Act, 1901, to be the Additional Collector in District Bahraich and authorised him to exercise all the powers and perform all the duties of a "Collector" "in all classes of cases". Claiming to exercise the