In Re: Susil C. Sen

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Court : Kolkata

Decided On : Feb-14-1941

Reported in : AIR1941Cal666

Appellant : In Re: Susil C. Sen

Judgement :

Derbyshire, C.J.

1. In or about April 1937, it was contemplated to enlarge the Indian Iron and Steel Co., to which Messrs. Martin and Co., were the managing agents. It was proposed to issue both fresh shares and fresh debentures to the public for the purpose of the enlargement. One of the existing shareholders, Mr. Khandelwala, who lives at Ahmedabad, came to Calcutta in order to nee to his interests and rights as a shareholder of the company, especially in connexion with certain proposals which Messrs. Martin and Co., were putting forward. Mr. Khandelwala consulted the petitioner, Mr. Susil Chandra Sen, who occupies an eminent position in the legal world in Calcutta. He is both an attorney and an advocate, who practices in this Court. Mr. Sen interviewed Messrs. Martin and Co., in connexion with his client's interest and also attended a meeting of the Indian Iron and Steel Company's share-holders which was held on or about 19th April 1937. He attended that meeting to represent the interest of his client. Before the meeting he had managed to come to an arrangement on behalf of big client with Messrs. Martin and Co., which partly met his client's objections. At the meeting which he attended under a proxy from Mr. Khandelwala, Mr. Sen made a speech. The minutes of the meeting

recorded as follows:

Mr. Susil Sen, on behalf of Mr. Khandelwala said that the position so fat as Mr. Khandelwala was concerned has been seriously misapprehended. It was not their purpose to obstruct the launching of the scheme but to safeguard the interests of the share-holders as far as possible in that scheme. In this respect he referred to the attitude of the managing agents, who had shown the greatest courtesy and spirit of consideration in hearing the objections of those whom Mr. Sen represented and endeavouring to remove many of the apprehensions and objections which they had brought to the notice of the chairman and the managing agents. He said he was is a position to state that after meeting the chairman and Mr. Mookerjee and as a result of the discussions which they had held with him, most of the apprehensions and misunderstandings had been removed. One of the misapprehensions related to the terms of the managing agency agreement and regarding the calculations and cost of pig iron. He was glad that misapprehensions in this respect had been removed. Other objections that they had raised to the scheme had also been met in a spirit of courtesy and reasonableness. There was some objection to the placing of debentures in London only. He said that from the fact the management had conceded so many of their points and the fact that the management on their representation had thrown open half the convertible debentures shows that there was considerable room for negotiation and constructive suggestions. He said their criticism did not by any moans imply any lack of confidence but was the result of anxiety on the part of those who were interested in the welfare of the Indian Iron and Steel Company as much as anyone else present there. He was glad to say that negotiations had been helpful in removing misunderstandings so that now it could be the wish of all those interested that the management should go ahead with the scheme because it would be desirable to lose no time on it. On behalf of those share-holders he ventured to ask the directors if they could persuade Sir Walter Craddock to release Rs. 30 lakhs shares more for the shareholders. He said in conclusion : 'The present time is opportune and we have got to go ahead with the scheme without any delay and the share-holders whom I represent wanted elucidation of the points I have referred to already and after the manner in which the management have behaved and met our objections and extended to us the courtesy and the benefit

of discussions, the share-holders have no complaint'.

2. It should be mentioned in connexion with that report that Sir Walter Craddock who was a partner in the firm of Messrs. Place Siddons & Gough, Stock-brokers of Calcutta had underwritten a part, at any rate, of the new shares which it was proposed to issue. Messrs. Mugniram Bangor, of which Mr. Ramkumar Bangor was the head, were also a firm of stockbrokers in Calcutta. There was subsequently a very substantial issue of shares to the public in which the public dealt very heavily and the prices of shares rose. Sir 'Walter Craddock and Messrs. Mugniram Bangor must have profited accordingly.

3. On 6th May 1937 a cheque for Rs. 10,000 made out in favour of Mr. Sen was sent to him by Messrs. Mugniram Bangor & Co. Mr. Sen credited that to his account. It appears from the books of Messrs. Mugniram Bangor & Co. that on 21st June they received from Messrs. Place Siddons and Gougfi'a cheque for Rs. 10,000 which they credited in their accounts opposite the payment they had made to Mr. Sen. Mr. Sen contends that that sum of Rupees 10,000 received by him was in the nature of a non-recurring casual payment made to him which does not fall to be assessed under the provisions of the Income-tax law. It should be made clear at this stage that Mr. Sen attended the meeting acting as the legal representative of Mr. Khandelwala who paid him his charges. Mr. Sen was apparently at no material time during this period of April and May 1937 acting as the legal adviser or representative of Messrs. Mugniram Bangor or Messrs. Place Siddons and Gough although it does appear that at some time he had been the legal adviser to Messrs. Mugniram Bangor. The section of the Income-tax Act which deals with taxable income is 4 which provides in Sub-section (1):

Save as here in after provided, this Act shall apply to all income, profits or gains, as described or comprised in Section 6, from whatever source derived, accruing or arising, or received in British India or deemed under the provisions of this Act to accrue or arise or to be received in British India...

(3) This Act shall not apply to the following classes of income:

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(vii) Any receipts 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.

4. It does not appear to have been contended that this sum of Rs. 10,000 was otherwise than of a casual non-recurring nature. Therefore if it is not a receipt arising from the exercise of Mr. Sen's profession, vocation or occupation it is not taxable, and that is the matter to be decided. Mr. Sen's statement as regards the matter I have set out in the general statement of facts above. He says further:

Before the meeting I had to meet the partners of Messrs. Martin & Co. and ultimately came to a workable arrangement with them which met my client's points half way and which benefited substantially the other share-holders with whom I had no professional connexion. Messrs. Mugniram Bangor & Co. and possibly Messrs. Place Siddons and Gough were interested in the flotation of the new company, but I was not consulted by them nor did I act for them. Mr. Ram Kumar Bangor of Messrs. Mugniram & Co. after the disputes had been settled to the satisfaction of my client, by way of appreciation of the benefit to the shareholders in whom they were possibly interested, paid me a sum of Rupees 10,000 as inam or gift. Mr. Ramkumar Bangor, I understand, later on recouped this sum from their own clientele.

5. Then he goes on:

The sum of Rs. 10,000 was, therefore, received by me as a casual receipt not in respect of any work done to Mr. Ramkumar Bangor professionally or otherwise or to any other person who might have been benefited by the work done by me for my client professionally for which I was duly paid for by him. The amount thus received is not taxable under the Income-tax Act. It is needless to point out that Mr. Bangor was under no obligation to pay anything to me as I did not act for him in any way in this matter so as to earn this. or any part of this sum as my fees. My costs were paid by my client. It was in the circumstances a pure windfall and nothing else.

6. Why was the Rs. 10,000 paid to Mr. Sen by Messrs. Mugniram Bangor & Co. and/or Messrs. Place Siddons & Gough? Mr. Sen-was acting for and rendered good service, I have no doubt, to Mr. Khandelwala who paid him for them. At the same time, and I have no doubt without any dereliction from his duty to Mr. Khandelwala, Mr. Sen incidentally and without being employed to do so did a very good turn to Messrs. Bangor and Messrs. Place Siddons & Gough, as a result of which they profited considerably. Commercial men rarely pay money without good reason and generally do so in return for property, goods, services or help. It is impossible for me to believe that but for Mr. Sen's help to them in smoothing out the share-holder's difficulties and his advocacy of the claim of Indian share-holders, in both of which things he was acting as Mr. Khandelwala's lawyer and advocate, the payers would have made that payment of Rs. 10,000. The question is notwithstanding that the Rs. 10,000 was not received under a contract to employ him from persons who were under no legal liability to pay it, does arise from the exercise of his profession? The matter stands to be decided upon its facts and upon an application of the Indian Income-tax law and arguments derived from cases decided under the English Income-tax Act are not binding on Indian Courts and are not always in point. But they do provide a certain amount of guidance.

7. Herbert v. McQuade (1902) 2 KB 631 was a case where a voluntary payment made to a clergyman as such was held to be taxable under Section 146, Schedule E, Rules 1 to 4, Income-tax Act, 1842, where it is provided that income-tax is to be charged on all persons holding public offices and employments of profit (including those held under any ecclesiastical body whether aggregate or sole) for all 'salaries, fees, wages perquisites or profits whatsoever occurring by reason of such offices, employments or pensions.' Sir Richard Collins, M. R. at page 649 said:

Now that judgment (referring to the case in Inland Revenue v. Strang (1878) 15 Sc LR 704,) whether or not the particular facts justified it is certainly an affirmation of a principle of law that a payment may be liable to income-tax although it is voluntary on the part of the persons who made it, and that the test is whether from the standpoint of the person who receives it, it accrues to him in virtue of his office; if it does it does not matter whether it was voluntary or whether it was compulsory

on the part of the persons who paid it. That seems to me to be the test; and if we once get to this that the money has come to, or accrued to, a person by virtue of his office - it seems to me that the liability to income-tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it.

8. The leading case on this matter in England is Blakiston v. Copper (1909) 1909 AC 104. There the Easter offerings for 1905 received by the Vicar of East Grinstead amounted to 56 of which the greater part had been collected by the churchwardens in the parish church on Easter Sunday and the rest at other times and places, or received by the vicar personally. Among the givers were churchmen, non-conformists, friends, parishioners, and strangers who appeared to have given for divers reasons-personal regard and esteem for a zealous and popular vicar, recognition of good work and long service and the like. It was held that those Easter offerings were taxable as coming within the Income-tax Act of 1842, Section 146, Schedule E, Rules 1 to 4. Lord Loreburn L. C. in his speech in the House of Lords said:

In my opinion, where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial or a contribution for a specific purpose as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present.

9. The whole of the 56 was held to be taxable although some of the contributions of which it was composed were made by non-conformists and strangers, who did not in the ordinary way receive the benefit of the vicar's services. I mention that because it has been pointed out that the Rs. 10,000 in the present case was paid by persons who did not directly get the benefit of Mr. Sen's services although indirectly they did. No letter accompanying the cheque for Rs. 10,000 has been exhibited to show that it was a testimonial to Mr. Sen, or a contribution for any specific purpose or that it was subject to any condition. It is clear to me that it was

paid to Mr. Sen because of the help he as a lawyer and advocate had rendered in April 1937 in respect of the new issue of shares in the Indian Iron and Steel Co. Ltd., through which help the payers had derived great benefit. I have therefore come to the conclusion that this sum of Rs. 10,000 was a receipt by Mr. Sen arising from the exercise by him of his profession as a lawyer and advocate and is part of Mr. Sen's income which is not exempt from tax under Section 4 (3), I am fortified in that conclusion by the reasoning of Lord Lore-burn in Blakiston v. Copper (1909) 1909 AC 104 and of the Master of the Rolls in Herbert v. McQuade (1902) 2 KB 631. My answer therefore to the question formulated by the Commissioner of Income-tax is in the negative. No order is made as to costs.

Panckridge, J.

10. I have very little to add to what has fallen from my Lord the Chief Justice. The question of law propounded to us is in general terms. The Commissioner asks 'whether the sum of Rs. 10,000 received by Mr. Susil C. Sen in the circumstances stated was exempt from Income-tax Act 1922? The statement of the case by the Commissioner seems to indicate that he assumes that the payment can properly be described as of a casual or nonrecurring nature. I will make the same assumption although I am not entirely convinced that the payment can properly be described as casual. The real point at issue is whether the payment can or cannot be described as a receipt arising from the exercise of a profession, vocation or occupation. My Lord the Chief Justice has called attention in his judgment to the differences between the scheme and language of the section of the Income-tax Act 1922, with which we are dealing and the scheme and language of Schedule E, Income-tax Act, of 1918 (8 & 9 Geo. V, C. 40), which was the statutory provision that fell to be considered in most of the cases which have been cited before us. I, however, will assume that on the facts the cases in Seymour v. Reed (1927) 1927 AC 554 and Stedford v. Beloe (1932) 1932 AC 388 would have been decided in the same way had the Income-tax Act of 1922 been applicable to them.

11. I desire to call attention to this, that in both those cases as also Commr. of Income-tax, Burma v. R. Johnstone (`34) 2 AIR 1934 Rang 377 the sum which it was sought to tax had been received in appreciation of the recipient's services

generally, and it was not suggested that it could be attributed to any particular activity by the recipient in the course of his profession or employment. This feature in the facts of those cases seems to me to be of considerable importance. Indeed, I very much doubt if the case of Seymour v. Reed (1927) 1927 AC 554 would be applicable to a professional cricketeer who had received a sum of money made up of contributions collected from the spectators at the close of an exceptionally meritorious innings. In the case before us it is, to my mind, clear that the sum received by Mr. Sen was not a testimonial to his ability or qualities as a lawyer generally, but was directly connected with a particular professional act, namely the part he played at the meeting of the share-holders held on 19th April 1937. Indeed, Mr. Sen's own account of the matter renders that clear. He says:

Mr. Ram Kumar Bangor of Messrs. Mugniram Bangor & Co. after the disputes had been settled to the satisfaction of my client, by way of appreciation of the benefit to the share-holders in whom they were possibly interested, paid me a sum of Rs. 10,000 as inam or gift.

12. I think possibly it would be a more accurate account of the matter to say that the money was paid not in appreciation of the benefit to the share-holders, but in appreciation of the part Mr. Sen had played in securing that benefit. It may not be enough to say, as the commissioner has done, that had Mr. Sen not been a solicitor, he would not have got the Rs. 10,000, for it is obvious that no recipient of a testimonial would ever have received it, had he not occupied the post in respect of which it was conferred upon him. But in this case the matter goes much further and, to my mind, it is as plain as anything could be that the causa causans of the payment was what Mr. Sen had done on the instructions of Mr. Khandelwala at the share-holders' meeting. It was because of the beneficial results to the share-holders which Mr. Bangor considered Mr. Sen's handling of the situation had produced, that the payment was made. In these circumstances, I agree that the answer to the question put to us must be in the negative and that the sum of Rs. 10,000 is assessable to income-tax.