

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 12TH DAY OF AUGUST, 2009

PRESENT

THE HON'BLE MR. JUSTICE D.V.SHYLENDRA KUMAR

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

I.T.A NO.275 OF 2004

BETWEEN

1. The Commissioner of Income-tax,
Central Circle, C.R.Building,
Queens Road,
Bangalore.
2. The Assistant Commissioner
Of Income-Tax,
Central Circle-I(4),
C.R.Building, Queens Road,
Bangalore.

(By Sri.M.V.Seshachala, Advocates)

:
Appellants

AND:

Sri.H.S.Ramachandra Rao,
No.178, 'Kaveri', 5th Main,
3rd Phase, J.P.Nagar,
Bangalore-78.

: Respondent

(By Sri.S.Parthasarathi,Advocate)

This Appeal is filed under Section 260A of Income Tax Act, 1961 to allow the appeal and set aside the order passed in IT(SS)A. No.49/Bang/2003 for the assessment year 1-4-1990 to 14-7-2000 by the ITAT, and confirm the order passed by the Appellate Commissioner and the Asst. Commissioner of Income Tax, Central Circle-(4), Bangalore.

This Appeal having been heard and reserved on 20-7-2009 coming on for pronouncement of judgment, this day, **ARAVIND KUMAR J.**, delivered the following:

JUDGMENT

This appeal by the revenue under Section 260 A of the Income tax Act, 1961 (Act, for short) is against the order dated 15-12-2003 passed by ITAT, Bangalore Bench-B in IT(SS)A No.49/Bang/2003 relating to the block assessment period 1-4-1990 to 14-7-2000.

2. The assessee is an individual. On 14-7-2000 search was conducted in the residential premises of the assessee and statement came to be recorded on 14-7-2000 and on 24-7-2000 under Section 132(4) of the Act. The assessee was also cross examined by one Dr. K. R. Paramahamsa. The assessee pursuant to the said search



filed return for the block period 1-4-1990 to 14-7-2000 on 24-4-2001 declaring undisclosed income as nil. During the course of search proceedings the assessee had admitted that he had received from Dr.K.R.Paramahamsa Chairman of Paramahamsa Foundation & Trust, Bangalore a sum of Rs.42 lakhs for relinquishing his life membership and secretary ship in Jayanagar Education Society. On verification by the authorities it was found that the Jayanagar Education Society, Bangalore had been started during 1966-67 and was running Primary and High School at No.27/2, II Main, VII Block east Jayanagar, Bangalore and the assessee was the founder life member and was also secretary of the said society during 1996-97. The assessee had also worked as the Head Master in the institution till the date of his superannuation in 1991.

3. It was also noticed by the authorities that during 1996-97 the management of the society was taken over by Dr.K.R.Paramahamsa Chariman of Paramahamsa



Foundation (R) Trust, Bangalore. The above said Jayanagar Education Society is having Kannada Medium school and this institution was and is being run on the land provided by the Bangalore Development Authority.

4. During the course of search proceedings as the assessee had admitted that he had received a sum of Rs.42 lakhs from the above said Dr.K.R.Paramahamsa and in response to the notice issued by the authorities under Section 158 BC the assessee filed block return declaring there under undisclosed income at nil and in the said block return in the statement enclosed to part III of the return pertaining to "total income and loss for the assessment year 1997-98", the assessee had mentioned that he had treated Rs.35,00,000/- received from Dr.K.R.Paramahamsa for relinquishing two posts held by him in Jayanagar Education Society as a capital receipt. The Assessing Officer after calling upon the assessee to justify the said claim and after considering the reply



thereunder held that the amount of Rs.37,54,266 as exigible to tax under the Act by treating the same as income under the head "income from other sources" and raised the demand accordingly by treating the said income as undisclosed income.

5. Aggrieved by the same the assessee filed an appeal before the CIT (appeals) in ITA 263/CC-1(4)/CIT(A)-VI/02-03 contending that the receipt; of Rs.37,54,266/- received by the assessee was for relinquishing life membership and secretary ship of the Jayanagar Education society by enclosing the copy of the proceedings of the executing Committee Meeting held on 15-9-1996 and 2-10-1996 convening change in management and his resignation to the above said two posts and thus claimed the said amount received from Dr.K.R.Paramahamsa is to be treated as capital receipt and thus not exigible to tax. The Appellate Authority after considering the contentions raised by the appellant/assessee rejected the same and



held that it is to be treated as Revenue receipt and confirmed the finding of the Assessing Officer who had treated the same as “undisclosed income” for the block period by order dated 13-9-2002.

6. Aggrieved by the same the assessee filed further appeal before the Tribunal assailing the same and by raising the following grounds:

- (i) The amount of Rs.37,54,266/- is to be treated as capital receipt and not revenue receipt.
- (ii) The finding of the first Appellate Authority in stating that receipt can be termed as goodwill is erroneous in law and there was no admitted sale of any goodwill.

The Tribunal after considering the contentions raised by the assessee and the case law relied thereunder came to the conclusion that the amount of Rs.37,54,266/- is capital in nature and accordingly allowed the appeal and reversed the findings of the first Appellate Authority who had confirmed the finding of the Assessing Officer.



7. Aggrieved by the same, the revenue has filed the present appeal by raising the following substantial questions of law:

“ Whether the Tribunal is correct in holding that the amount received by the assessee for relinquishing his life membership and secretary ship of the Jayanagar education society which he had founded and had been running for the past 31 years was nothing but a compensation received and should be treated as capital in nature and cannot be brought to tax under the Head Income from other sources.?”

8. We have heard Sri.M.V.Seshachala, learned Senior Standing counsel for the Department and Sri.Parthasarathi, learned counsel appearing for the assessee and we have perused the orders of the both the Appellate Authorities, the Assessment Order as also the statement given by the assessee under Section 132(4) before the authorities on 14-7-2000, 24-7-2000,



17-7-2002 and the cross examination of the assessee dated 17-7-2002 and our finding on the said substantial question of law raised herein above is in the affirmative for the following reasons.

9. A search was conducted in the assessee's premises on 14-7-2000 and during the course of search the assessee admitted that he had received from Dr.K.R.Paramahansa, Chairman of Paramahansa Foundation (R) Trust, Bangalore a sum of Rs.42 lakhs for relinquishing his life membership and the secretaryship in Jayanagar Education Society. The authorities on verification found that the Jayanagar Education Society, Bangalore was started during 1966-67 and was running Primary and High School in premises No.27/2, II Main, VII Block (E) Jayanagar, Bangalore where the assessee was a founder life member and secretary who had also worked as Head Master of the Institution till 1991. It was found by the Assessing Officer that during the year 1996-97 the management of this



society was taken over by Dr.K.R.Paramahansa and his family members and other persons of the institution. It was admitted by the assessee before the authorities that he received a total amount of Rs.42,00,000/- in cash was received in October 1996 from Dr.K.R.Paramahansa in consideration of handing over the management of Jayanagar Education Society. Though the assessee agreed to offer the amount received from Dr.Paramahansa for tax in block assessment during the course of search proceedings, later NIL return was filed by the assessee as per the order of the Assessing Officer. In the statement of computation of total income for the assessment year 1997-98 the assessee stated therein that Rs.35,00,000/- received from Dr.K.R.Paramahansa is treated as capital receipt. However, the Assessing Officer brought the said amount under income from "other sources" and taxed the entire sum of Rs.45,20,420/- as total undisclosed income without giving any deductions. This assessment order was carried in appeal before the CIT (appeals) which



resulted in a sum of Rs.2,57,000/- being deleted which had been added by the Assessing Officer as unexplained investment. The assessee carried in further appeal before the Tribunal and Tribunal held that the sum of Rs.37,54,266/- is referable to the relinquishment of the post of honorary Pricipalship and admittedly the appellant had worked as full time Head Master for a substantial period till his retirement till 1991. The intrinsic link between the profession and avocation of the appellant stands established and concluded that the said receipt is directly referable to the profession/avocation and relied upon the judgment in P.Krishna Menon Vs. CIT (35 ITR 48) (SC) wherein it had been held that teaching is an avocation if not a profession and teaching 'Vedanta' is just as much teaching as any other teaching and therefore an avocation and on this premise granted the relief to the assessee.

10. Sri.M.V.Seshachala contends that the authorities/citations referred to and relied upon by the



Tribunal are not applicable and relevant for the purpose of the present set of facts. He further contends the receipt is not in the nature of capital receipt as admittedly money was not received for transfer of any capital asset and assessee himself claims that said amount was received for relinquishing the Life membership and Secretaryship of the Society and hence it has to be treated as revenue receipt. It is also contended that the assessee himself had volunteered that it is undisclosed income, in his statement given under Section 132(4). In the statement dated 14-7-2000 the respondent has not specified or has come out with the actual amount he received. In fact he admits in the statement dated 14-7-2000 to the following effect:

“There was a Litigation about the post of the Secretary between one of the members and then secretary i.e., my self. The litigation went for seven years in the Court without any final conclusion. Meanwhile the Government superceded the Society and nearly for a year and a half government appointed an Administrator who maintained the function of



the society. The administrator handed over the society during 1990 forming a Managing committee with a resolution to strengthen the management by adding new members. This was done as per the instruction. During 1996 I left the institution after new members were elected in the managing Committee form then onward I have no connection with the society.

For the first time the respondent has come up with the following admission on 24-7-2000 in his further statement:

"I have also received a Rs.35 lakhs (Rupees Thirty five lakhs) as capital receipts for relinquishing my life membership and secretaryship in Jayanagar Education Society"

11. Sri.Parthasarathy, learned counsel appearing for the respondent contends that receipt of this amount by the assessee is not in the nature of income at all but it is in the nature of honorarium and it is a capital receipt for giving up the post of honorary secretaryship and life membership of the society and further submits that the consideration so received is in lieu of giving up the post which had certain status and



position in the society. In this regard the decision in the matter of CIT Vs. K.R.Honnappa (1989) 180 ITR 660 (Kar) has been to relied upon. In the said case a member of Legislative Assembly was handed over as purse/money collected by the admirers for purchasing a car and it was considered as a Capital Receipt. The said decision would be of no assistance to the respondent assessee, in the instant case since it is distinguishable both on facts and on law for the following reasons:

- (i) That was a case where the consideration paid to the MLA was on account of personal character i.e., for rendering services to the constituency in general and there was no quid pro quo for services rendered by the MLA to the contributors. Whereas in the instant case it is by the way of quid pro quo namely to give up the post the assessee was holding amount was paid and hence it cannot be characterised as money paid towards rendition of any services.
- (ii) In the instant case the money was paid by a third person namely Dr.K.R.Paramahansa to induce the



assessee to give up the Secretaryship or life membership.

Hence the citation above referred to relied upon by the learned counsel for the respondent is inapplicable to the facts of the present case.

12. Sri.Parthasarathy, learned counsel for the respondent assessee would draw our attention to the question framed by the revenue for determination which is only as to the nature of the receipt by the assessee which is by way of compensation received for giving up the secretaryship and life membership of the assessee society which is to be considered and not as a case of undisclosed income of the assessee. In this regard Sri.Parthasarathy relies upon the following decisions:

1. (1942) 10 ITR 157 (Bom)
Duff (H M Inspector of taxes) v Barlow
2. (1957) 31 ITR 826 (Bom)
W A Guff v CIT Bombay
3. (1959) 36 ITR 84 (Bom)
H S Captain v CIT Bombay
4. (1959) 36 ITR 175 (SC)
CIT Hyd v Vazir Sultan and Sons

5. (1963) 48 ITR 237 (SC)
CIT Bombay v E D Sheppard
6. (1963) 48 ITR 324 (All)
Lal Chand Gopal Das v CIT UP
7. (1971) 82 ITR 804 (SC)
CIT P & H v Prabhu Dayal

The said decisions are distinguishable on facts of this case inasmuch as in all those cases it was on account of termination of office held with pecuniary benefits attached to it which had been relinquished which came to be compensated and thus it was held it was a capital receipt. Hence, those decisions are not applicable to the facts of the case.

13. Sri.Parthasarathy also relies upon the following decisions:

- (i) CIT VS. M. Appukutty 2002(253) ITR 159
- (ii) Karam Chand Thapar and Bros.P.Ltd. Vs.CIT Calcutta,
1971(80) ITR 167
- (iii) CIT VS. B.C. Srinivasa Setty (1981) 128 ITR 294.

The first case relied upon pertains to the proprietary concern having possession of a shop and the said proprietary concern



was converted into partnership and came into possession of the shop and later on it was sold by the partnership firm. Thus it was held in the facts of the said case that the amount received by way of such sale the right of possession with reference to cost of acquisition cannot be quantified and accordingly held that the gains would not be assessable under Section 45 of the Income Tax Act. In the present case it is to be noticed that as Secretary of the society and as also its life member, the assessee was admittedly rendering honorary services and without any remuneration and thus there is no loss of income or remuneration to the respondent and thus the said judgment is inapplicable to the facts of the case.

14. In so far as the Karam Chand Thapar's case referred to at No. (ii) it was a case of termination of one of the several managing agencies managed by assessee and compensation paid on such termination was held to be capital receipt. It has also been held in the said decision that the department has to establish the case within the exception to the ordinary rule. In the instant case the first Appellate Authority namely CIT (Appeals) has examined the nature of receipt in the hands of the



respondent assessee and came to the conclusion that it is a revenue receipt. We do not find any good reason to deviate from the said finding of fact. - The third decision which is referred to above is pressed into service to contend goodwill when sold for consideration it becomes capital value of the asset not profit or gain. This ground ought to fail inasmuch as it was the specific contention of the assessee before the first Appellate Authority in the grounds raised namely ground No.3 which reads as follows:

iii That the learned CIT(A) erred in stating that the receipt can be termed as Goodwill as there was admittedly no sale of such goodwill. The society's main property was a leased land belonging to Bangalore Development Authority for which an annual lease payment was being paid and the institution was recognized by the department of Education, Government of Karnataka, so the question of goodwill does not arise.

In view of this specific contention having been taken by the assessee before the Appellate Authority that it is not a good will the assessee cannot contend contrary to the same.



15. From the foregoing discussion it has to be concluded that the amount received by the assessee cannot be treated as a capital receipt since to forego life membership or secretaryship, there is no capital asset which has been transferred by the assessee in favour of Dr. Paramahansa. Further the assessee was not earning any income or making profit out of the said posts and by virtue of relinquishing the same, the assessee did not lose monetarily and as such the amount received from Dr. Paramahansa by the assessee cannot be termed or construed as capital receipt.

16. In view of the discussion made here in above we are of the considered opinion that the amount received by the assessee cannot be treated as capital in nature as held by the Tribunal but ought to be treated as income from other sources.

17. Accordingly we answer the question of law formulated herein above in favour of the revenue and against the assessee. Appeal is allowed accordingly. No order as to costs.

Sd/-
Judge

Sd/-
Judge

Sbb/-