JUDGMENT

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The judgment of the court was delivered by

MAHENDRA J.-On a reference made by one of us (Puttaswamy J.), these cases were posted before us for hearing.

As common questions of law arise for consideration in all these cases, they are heard together and disposed of by this common order.

The petitioners in some of these cases are the employees of the State Bank of Hyderabad working in several branches of the said bank in Gulbarga District and the petitioners in the other cases are the employees of the Bharat Electronics Limited, Bangalore.

All the petitioners, who draw salaries and allowances of varying amounts, in terms of their employment, are assessed under the I.T. Act, 1961 (hereinafter referred to as "the Act"). The taxes payable by the petitioners are deducted at source from their salary as provided in s. 192 of the Act. All the employees of the State Bank of Hyderabad and Bharat Electronics Limited, Bangalore, including the petitioners are paid monthly House Rent Allowance (HRA), and a certain amount as encashment of leave once a year or once in two years, as the case may be, in terms of their conditions of service. All the petitioners are in occupation of their own houses. In computing the total income of the petitioners, both the H.R.A. and the cash amount of encashment of leave are included as part of their income for the purpose of deducting income-tax under s. 192 of the Act. The petitioners have, in these petitions, filed under article 226 of the Constitution of India, prayed for the issue of a writ in the nature of mandamus directing the Commissioner of Income-tax in Karnataka, Bangalore, not to treat the House Rent Allowance and the encashment of leave as part of their income for the purpose of deducting the taxes payable by them under s. 192 of the Act.

Sriyuths Shivaraj Patil and M. C. Pattanshetti appeared for the petitioners and G. Sarangan assisted by H. Raghavendra Rao appeared for the Revenue.

The H.R.A. given to the petitioners, it was argued, is by way of compensation or special allowance to every employee irrespective of whether he is residing in a rented house or is residing in his own house and is therefore, exempt from tax under s. 10(13A) of the Act read with rule 2A

of the Rules. Reliance was placed for this contention on CIT v. S. C. Mittal [1980] 121 ITR 503 (P & H); CIT v. Tuli, ex-Judge [1980] 125 ITR 460 (P & H) and CIT v. Gujral, Chief Justice [1980] 125 ITR 655 (P & H).

But, for the Revenue, it was argued that the H.R.A. is a special allowance paid to meet or reimburse the actual expenditure incurred on payment of rent and as the petitioners in occupation of their own houses do not incur any expenditure on payment of rent for the premises in their occupation, the H.R.A. paid to such petitioners is not exempt from tax. It was further maintained that the decisions on which reliance was placed on behalf of the petitioners have not laid down the law correctly and an appeal filed by the Revenue challenging the decision injustice Mittal's case is pending in the Supreme Court.

We may, at this stage, refer to s. 10(l3A) of the Act and rule 2A of the I.T. Rules. They read:

" Section 10. Incomes not included in total income.-In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.-.....

(13A) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent (not exceeding four hundred rupees per month) as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations.

Rule 2A. Limits for the purposes of s. 10(13A).-The amount which is not to be included in the total income of an assessee in respect of the special allowance referred to in clause (13A) of section 10 shall be

(a) the actual amount of such allowance received by the assessee in

respect of the relevant period; or

(b) the amount by which the expenditure actually incurred by the assessee in payment of rent in respect of residential accommodation occupied by him exceeds one-tenth of the amount of salary due to the assessee in respect of the relevant period; or

(c) an amount equal to-

(i) where such residential accommodation is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bombay, Calcutta, Cochin, Coimbatore, Delhi, Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lucknow, Madras, Madurai, Nagpur, Patna, Poona, Sholapur, Srinagar, Surat, Trivandrum, Vadodara (Baroda) or Varanasi (Banaras) one-fifth of the amount of salary due to the assessee in respect of the relevant period, and

(ii) where such residential accommodation is situate at any other place, one-tenth of the amount of salary due to the assessee in respect of the relevant period; or

(d) a sum calculated at the rate of Rs. 400 per month in respect of the relevant period;

whichever is the least...

Sub-section (13A) of s. 10 of the Act exempts from income-tax, not exceeding rupees four hundred per month, any allowance specifically granted to an employee by the employer to meet expenditure actually incurred as payment of rent for residential accommodation occupied by the employee to the extent prescribed under the I.T. Rules, 1962. Rule 2A of the Rules prescribes that the employee can claim exemption of the (least of the) following amounts:

(i) the actual amount of allowance granted; or

(ii) the amount of actual rent paid in excess of one-tenth of the salary; or

(iii) an amount equal to one-tenth of salary (one-fifth of the salary in case where the residential accommodation is situate in or at the specified cities, etc.);

and

(iv) a sum of Rs. 400 per month given under sub-s. (13A) of s. 10 of the Act.

The petitioner can, therefore, claim exemption of the allowance paid to him by his employer to meet the expenditure actually incurred on payment of rent for his residential accommodation. The payment is to meet expenditure already incurred on payment of rent.

The meaning of the term " expenditure " came up for consideration before the Supreme Court in Indian Molasses Co. (Private) Limited v. CIT [1959] 37 ITR 66 and CIT v. Nainital Bank Limited [1966] 62 ITR 638. In Indian Molasses Co.'s case, the court was considering clause (xv) of s. 10(2) of the Indian I.T. Act, 1922, which read as follows:

"Section 10: Business.-(1) The tax shall be payable by an assessee under the head'Profits and gains of business, profession or vocation' in respect of the profits and gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely

(xv) any expenditure (not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out

or expended wholly and exclusively for the purpose of such business, profession or vocation. "

The Supreme Court has explained that " expenditure " is equal to de expense " and " expense " is money laid out by calculation and intention, though in many uses of the word, this element may not be present, as when we speak of a joke at another's expense. But the idea of "spending " in the sense of " paying out or away " money is the primary meaning and it is with that meaning that we are concerned. " Expenditure " is thus what is " paid out or away " and is something which is gone irretrievably and held that " To be an allowance within

clause (xv), the money paid out or away must be (a) paid out wholly and exclusively for the purpose of the business and, further, (b) must not be, (i) capital expenditure, (ii) personal expense, or (iii) an allowance of the character described in clauses (i) to (xiv). But whatever the character of the expenditure, it must be a paying out or away, and we are not concerned with the other qualifying aspects of such expenditure stated in the clause either affirmatively or negatively ". (p. 78 of 37 ITR)

In Nainital Bank's case [1966] 62 ITR 638 (SC), the court was considering the meaning of the word " expenditure " in s. 10(2)(xv) of the Indian I. T. Act, 1922. In that case, a large quantity of jewellery pledged with the assessee-bank by its constituents and currency notes were stolen by dacoits from its premises. In regard to the loss of the jewellery, the bank settled the claim of the constituents on these terms: When the market value of the jewellery exceeded the amount advanced, the difference was paid by the bank to the constituent, and when the market value of the jewellery was less than the amount advanced, the difference was recovered from he constituent. Under the adjustments so made, the bank made total payments of Rs. 48,891 and Rs. 1,21,760 in the years 1952 and 1953 respectively and claimed deduction of the respective amounts in computing its taxable income for the assessment years 1953-54 and 1954-55. On these facts, again the Supreme Court explained the term " expenditure " thus (p. 641):

" In its normal meaning, the expression'expenditure' denotes spending' or'paying out or away', i.e., something that goes out of the coffers of the assessee. A mere liability to satisfy an obligation by an assessee is undoubtedly not'expenditure': it is only when he satisfies the obligation by delivery of cash or property or by settlement of accounts, there is expenditure. But expenditure does not necessarily involve actual delivery of or parting with money or property. If there are cross-claims-one by the assessee against a stranger and the other by the stranger against the assessee and as a result of accounting, the balance due only is paid, the

amount which is debited against the assessee in the settlement of accounts may appropriately be termed' expenditure' within the meaning of

section 10(2)(xv) ".

and held that the amounts paid by the bank were " expenditure " and, therefore, allowable as deductions under s. 10(2)(xv) of the Indian I.T. Act, 1922.

We now proceed to analyse sub-section (13A) of s. 10 of the Act, bearing the meaning of the word "expenditure" expounded under the earlier Act, which equally governs the meaning of that term occurring in the new Act also.

Even without the word " actually incurred ", the word " expenditure " in sub-s. (13A) means the special allowance given to the assessee to meet " what is paid out or paid away " on payment of rent in respect of residential accommodation occupied by him to the extent prescribed. The allowance is paid to reimburse the assessee " what he has paid or paid away" a s rent for the residential accommodation occupied by him. The assessee can claim to " have paid or paid away " rent for his residential accommodation only when he is in occupation of residential accommodation not belonging to him but belonging to some one else and the relationship between the assessee and the person to whom the payments are made is that of a landlord and tenant. In other words, the assessee must be in occupation of a premises as a lessee of a premises and must be paying rent to the landlord, the owner of the premises in his occupation. He cannot claim to " have paid or paid away " or claim that something has gone out of his coffer as " rent " to himself as nothing goes out of his coffer when he is in the occupation of residential premises of which he is the owner. He cannot be both asessee and lessor of the residential premises in his occupation. It, therefore, follows that if the assessee is in occupation of a residential premises of which he is not a lessee, he will not "have paid or paid away " rent and nothing goes out of the coffer of the assessee. The H.R.A. paid to an assessee who is not in occupation of a rented premises but his own, is not for reimbursing or meeting any amount paid or paid away or any amount that has gone out of his coffer as rent and, therefore, is not exempt from tax liability. The Legislature has used the word " expenditure " as meaning paying out or paid away or as something which is gone irretrievably. By using the word " expenditure actually incurred ", the Legislature had made its intent very clear and beyond all doubt. We have, therefore, no doubt in our mind that the petitioners

who are in occupation of residential premises not taken on lease but belonging to them cannot claim that the special allowances they get as H.R.A. is exempt from tax liability under s. 10(13A) of the Act.

In Justice Mittal's case [1980] 121 ITR 503, the Punjab and Haryana High Court has held that " the provisions of s. 10(l 3A) of the Act have been enacted to compensate the assessee regarding the expenditure incurred on payment of rent in respect of residential accommodation occupied by him. The main object of enacting this provision appears to be that in case an assessee actually suffers monetary loss by way of expenditure or otherwise in respect of residential accommodation occupied by him and if he is compensated by his employer, in that case, subject to the limitations imposed under the Act and the Rules, the allowance paid to him by the employer shall be exempt from income-tax. An assessee, who occupies his own house, has disentitled himself from the rent which he would have been entitled to if he had not occupied the same himself, and, in that sense, he suffered expenditure in that regard. In that sense, an assessee occupying his own house, if compensated by the employer by payment of a special allowance (HRA), subject to the restrictions imposed under the Act and the Rules, the compensation paid to the assessee by his employer cannot be subjected to tax ". In the latter two cases also, the Punjab and Haryana High Court has reiterated its earlier view in Justice Mittal's case [1980] 121 ITR 503. All these three cases of the Punjab and Haryana High Court support the case of the petitioners.

With great respect to the learned judges who decided these cases, we regret our inability to subscribe to their views for more than one reason. With respect, the reasoning adopted in these cases runs counter to the clear meaning of the words " to meet the expenditure actually incurred on payment of rent for the residential accommodation ". The construction placed in these cases does not flow from the plain language of the provision, and is also opposed to the concept of " expenditure ", which we have earlier dealt at length. We are also of the view that the court has really legislated in the guise of interpretation which is impermissible (Vide Pokstar Electronic (Pvt.) Ltd. v. Addl. CST [1971] 41 STC 409 (SC)).

We have earlier dissented from the view expressed by the Punjab and Haryana High Court in Justice Mittal's case [1980] 121 ITR 503 and other cases that have followed that case. When that is so, our following the enunciation in those cases or any of the authorities functioning in the State of Karnataka, following those cases, also does not arise. In this view, the other contentions urged for the petitioners do not require an examination. But still we propose to notice them and express our views on them also.

It was next argued for the petitioners that we must accept the view taken by the Punjab and Haryana High Court on the interpretation of s. 10(13A) of the Act, which is an all India statute and the law declared by

the Punjab and Haryana High Court in Justice Mittals' case and the other two cases is binding on the income-tax authorities in this and other States and in support of these submissions, very strong reliance was placed on CIT v. Tata Sons (P.) Ltd. [1974] 97 ITR 128 (Bom) and CIT v. Smt. Godavaridevi Saraf [1978] 113 ITR 589 (Bom).

Our Constitution, which is essentially federal, unlike in America, has established a common judiciary in the country to administer Central and State laws. At the apex of the Indian judiciary, we have the Supreme Court of India, whose jurisdiction extends over the entire country. The law declared by the Supreme Court has efficacy throughout the country and ex abundanti cautela is made binding on all authorities and courts including all High Courts in the whole country (vide article 141 of the Constitution).

But a High Court established for one or more States, as can be the case, exercises jurisdiction subject to the other provisions of the Constitution and the laws over the territorial area of one or more States for which it is established and not throughout the length and breadth of the country. Every High Court established under the Constitution for one or more States is as independent and supreme as the Supreme Court itself in its own territory in its own sphere and is not subordinate to another High Court and is not bound by the decisions of other High Courts. Any decision of a High Court striking down a parliamentary enactment or an all India enactment, operates only in the territorial area of that

High Court and does not operate in any other territorial area, however incongruous that may be, unlike in the case of a decision rendered by the Supreme Court. After all, this position that flows from the Constitution, the policy conceived and established thereto by the founding fathers cannot be got over by holding that a High Court, the authorities and the Tribunals functioning thereto are bound by the decision or declaration made by another High Court, however correct or wrong that may be. Any decision rendered by a High Court either on the validity or the construction of an all India enactment, will only be binding on that High Court, the courts and the Tribunals functioning in the territorial area over which it exercises jurisdiction and not on other High Courts, and the courts and the Tribunals functioning in the territorial area of that other High Court. As we apprehend, this is the very view expressed by a Division Bench of this court in Dr. Kapadia v. CIT [1973] 87 ITR 511 arising under the Act or the earlier Act, in which this court held that a decision rendered by the High Court of Gujarat would be binding only in that State and not in the State of Karnataka.

In CIT v. Godavaridevi Saraf [1978] 113 ITR 589 (Bom), a Division Bench of the Bombay High Court dealing with the effect of a decision of the Madras High Court striking down s. 140A(3) of the Act and its binding effect on the Tribunals functioning in the State of Bombay, expressed thus (at p. 592):

" Actually, the question of authoritative or persuasive decision does not arise in the present case because a Tribunal constituted under the Act has no jurisdiction to go into the question of constitutionality of the provisions of that statute. It should not be overlooked that the Income-tax Act is an All India statute and if an Income-tax Tribunal in Madras, in view of the decision of the Madras High Court, has to proceed on the footing that section 140A(3) was non-existent, the order of penalty thereunder cannot be imposed by the authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land. When the Tribunal set aside the order of penalty, it did not go into the question of intra vires or ultra vires. It did not go into the question of constitutionality of s. 140A(3). That section was already declared ultra vires by a competent High Court in the country and an authority like an Income-tax Tribunal

acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question. It is admitted before us that at the time when the Tribunal decided the question, no other High Court in the country had taken a contrary view on the question of constitutionality of section 140A(3).

With great respect to the learned judges, this enunciation runs counter to the very scheme of our Constitution and the position of the High Courts in the country, which we have earlier explained. We, therefore, regret our inability to subscribe to these views of their Lordships.

In CIT v. Tata Sons Private Limited [1974] 97 ITR 128, the High Court of Bombay dealing with a case arising under the earlier I.T. Act and a decision rendered by the High Court of Calcutta has expressed thus (p. 131):

" The practice and the policy established is that in these matters whatever our own view may be we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all-India statute'."

On the desirability to have uniformity of decisions, there cannot be two opinions. But, that desirability cannot be elevated to an absolute proposi-

tion of law to hold that a court is bound to follow a decision of another High Court. What we have said earlier on the position of the Supreme Court and the High Courts in the, country equally governs this question also. In this connection, it is pertinent to recall the observations of Sir Maurice Linford Gwyer, Chief Justice of the Federal Court of India, In Ye Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (AIR 1939 FC 1, at p. 5), which read thus:

Disputes with regard to central and provincial legislative spheres are inevitable under every federal Constitution, and have been the subject matter of a long series of cases in Canada, Australia and the United States, as Well as of numerous decisions on appeal by the judicial Committee. Many of these cases were cited in the course of the argument. The decisions of Canadian and Australian Courts are not binding upon us, and still less those of the United

States, but, where they are relevant, they will always be listened to in this court with attention and respect, as the judgments of eminent men accustomed to expound and illumine the principles of jurisprudence similar to our own; and if this court is so fortunate as to find itself in agreement with them, it will deem its own opinion to be strengthened and confirmed. But there are a few subjects on which the decisions of other courts require to be treated with greater caution than that of federal and provincial powers, for in the last analysis the decision must depend upon the words of the Constitution which the court is interpreting; and since no two Constitutions are in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases; for a word or a phrase may take a colour from its context and bear different senses accordingly.

What is stated here with reference to the then Federal Court aptly apply before the High Court also subject, of course, to the binding effect of a decision of the Supreme Court.

In City Tobacco Mart v. ITO [1955] 27 ITR 549 (Mys), Mallappa J. of the erstwhile Mysore High Court, dealing with a case under the earlier I.T. Act and a decision of the Travancore-Cochin High Court and its binding effect, in a separate but concurring opinion, expressed on this question thus (p. 571):

" We, with very great respect, therefore, cannot follow this decision, though we would ordinarily follow a decision of another High Court in such matters as this when it is desirable to lay down a common policy. "

We are in respectful agreement with these views which correctly lay down the law. From this as also from our earlier discussion, we regret our inability to subscribe to the views expressed by the High Court of Bombay in Tata Sons (P.) Ltd.'s case [1974] 97 ITR 128, if the statement made therein

is understood as an absolute proposition. But we wish to add that although a decision of another High Court is not binding on this court, we see no reason for not accepting, with respectful caution, any help they can give in the elucidation of questions which arise before this court.

In East India Commercial Company Limited. v. Collector of Customs, Calcutta [1962] AIR 1962 SC 1893, by a majority decision the Supreme Court held that a decision rendered by a High Court of a State is binding on all the authorities and the Tribunals situated in that State. The ratio in East India Commercial's case does not lead to the conclusion that the decision of one High Court is binding on another High Court.

On the above discussion, we hold that there is no merit in this contention urged for the petitioners and we reject the same.

We may, at this stage, refer to one other contention urged on behalf of the petitioners.

Learned counsel for the petitioners have urged that pursuant to the decisions of the Punjab and Haryana, Bombay and Andhra Pradesh High Courts, the Central Board of Direct Taxes had issued a Circular No: 298 dated April 15, 1981, directing the authorities functioning in those States to obey and give effect to those decisions in their respective areas and it was bound to give effect to them in all other States in the country and in any event for Karnataka also.

We were informed by the learned counsel for the Revenue that the Revenue had filed appeals challenging the correctness of the decisions in Justice Mittal's case [1980] 121 ITR 503 (P & H) and Smt. Godavaridevi Saraf's case [1978] 113 ITR 589 (Bom), before the Hon'ble Supreme Court and they are pending.

In the face of the decisions of the Punjab and Haryana, Bombay and Andhra Pradesh High Courts, which had efficacy in those States, we do not find anything illegal and improper in the Central Board of Revenue directing the authorities functioning in those States to follow the decisions of those High Courts in those States till the appeals filed by the Revenue before the Supreme Court are decided. On any principle, the said direction does not contravene article 14 of the Constitution. We see no merit in this contention of the petitioners and we reject the same.

We now proceed to consider the other claim of the petitioners for exemption of the encashment of leave from tax liability.

The encashment of leave, according to the petitioners, is neither salary " nor " profit in lieu of salary " and is, therefore, not taxable. The encashment of leave, according to them, is only compensation paid in lieu of leave surrendered, is in the nature of capital receipt and is, therefore,

not taxable as income. The words " encashment of leave ", it was argued, do not fall within the meaning of the word " salary " as defined in subs. (1) of s. 27 or " profits in lieu of salary " as defined in sub-s. (3)(ii) of s. 17 of the Act and, therefore, not taxable.

Section 14 of the Act enumerates the six heads under which the income of an assessee falls to be charged and "salaries" is one of the heads so enumerated. Section 15 of the Act is couched in the widest possible terms and every kind of remuneration of every kind of servant, public or private, and, however highly or lowly placed he may be, is covered under this section. No payment can fall to be taxed under this section unless the relationship of employer and employee exists between the payer and the payee. Section 16 of the Act provides that the computation of the income chargeable under the head " Salaries " shall be made after making the deductions specified therein. Section 17 of the Act defines the word " salary " perquisite " and " profits in lieu of salary ".

Section 17(3) of the Act that is material reads thus:

" 17. For the purpose of sections 15 and 16 and of this section,-

(1)'Salary' includes.....

(2)'perquisite' includes.....

(3)'profits in lieu of salary' includes

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of

his employment or the modification of the terms and conditions relating thereto;

(ii) any payment [other than any payment referred to in clause (10), clause (10A), clause (10B), clause (11), clause (12) or clause (13A) of section 10], due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions. "

Section 17 of the Act enumerates a large number of benefits arising from employment which fall to be assessed as " salary ". Under sub-s. (3) of s. 17, any payment (other than payment referred to in cl. (10), cl. (10A), cl. (10B), cl. (11), cl. (12) or cl. (13A) of s. 10, due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions is a profit of employment and is included within the meaning of the expression " profits in lieu of salary ".

There are two forms of interpretation clause. In one, Where the word defined is declared to " mean " so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to " include " so and so, the definition is extensive (Craies on Statute Law, 7th edition, page 213). A definition or interpretation clause which extends the meaning of the word does not take away its ordinary meaning. The word " include " is often used in interpretation clause in order to enlarge the meaning of the words or phrases occurring in the body of the " statute"; where it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also these things which the interpretation clause declares that they shall include: CIT v. Taj Mahal Hotel [1971] 82 ITR 44 (SC).

The words " salary " and " profits in lieu of salary " have, therefore, to be understood as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause

declares that they shall include. These words cannot be understood to mean only such things which the definition or the interpretation clause declares they shall include.

Some of the petitioners are the employees of the State Bank of Hyderabad and some others are the employees of the Bharat Electronics Limited, Bangalore, and each of them is getting " salary " every month. That the relationship between the petitioners and the management is that of an employer and employee is not in dispute. That the encashment of leave is also due to them or received by them from their employers is also not in dispute. But their case is that the " encashment of leave " is due to them or is received by them not because of any employer and employee relationship but as compensation for the leave surrendered by them.

Whether the salary received by an employee in lieu of notice on termination of service was a revenue income taxable under s. 7, Explanation 2 of the Indian I.T. Act, 1922 (before amendment in 1955), or a capital receipt not liable to tax under the said Act, was considered by the Supreme Court in Talwar v. CIT [1963] 49 ITR (SC) 122. In that case, the assessee was appointed as the general manager of a company for a period of five years. The service agreement provided that the employer could terminate his services by giving twelve months' notice or paying any salary in lieu thereof. His services were terminated without notice but in lieu of notice he was paid twelve months' salary. He, therefore, got exactly what he was entitled to under the terms of employment and he was not deprived of any rights under the contract of service. The Supreme Court observed that " If V. D. Talwar had been served with a notice for the ter-

mination of his service, he would have worked for twelve months and got his salary and thereafter his services would have come to an end. Instead of giving him a notice, the company paid him twelve months' salary in lieu thereof. The true position is that he received twelve months' salary in respect of his office though he did not do any work for that period. By no stretch of imagination can it be said that the sum paid to him was in consideration of the surrender by the recipient of his rights in respect of the office " and held that the amount paid to the assessee was not compensation for loss of employment and is taxable.

From the above enunciation, it follows that payment received by an employee by way of damages, for the repudiation of the service agreement or for deprivation of profits to which he would have been entitled to under the service agreement or payments received by an employee for the surrender of his rights acquired under the contract of employment, does not fall within the meaning of the expression " compensation " and is not in the nature of capital receipt. In other words, payments received by an employee outside the contract of employment or service agreement do not come within the meaning of the expression " compensation " and is not in the nature of "capital receipt ". If the payment received by an employee can be regarded as a sum derived from the contract of employment or if payment accrues to the employee by virtue of the post he holds or, in other words, if the payment received by an employee is relatable to or flows from the terms and conditions of the contract of service, such payment is not received by way of damages and will not come within the meaning of the expression compensation " and is not in the nature of " capital receipt".

The question for consideration, therefore, is, whether the It encashment of leave " is compensation or capital receipt outside the contract of employment or whether " encashment of leave " flows or is relatable to the terms and conditions of the contract of employment.

The terms and conditions of employment are regulated by the Rules and Regulations by the employer. The grant of leave to an employee is also regulated by the relevant Rules and Regulations. An employee has to earn admissible leave in the first instance and only when he has leave to his credit in terms of the conditions of service, he can apply for grant of leave. When an employee avails of the sanctioned leave, he will receive pay and allowances for the said period equivalent to what he would have received if he had not availed of he leave but had continued to work. An employee has, therefore, a right for receiving salary and allowances without

working for the period of leave availed of. This payment he receives is in terms of employment and is taxable. An employee is also allowed to surrender leave and receive payment of the salary and allowances to which he is entitled

for the period of leave not availed of. This is also regulated by a set of rules in force in this behalf commonly known as " Rules regarding surrender of earned leave and payment of salary therefor or encashment of leave rules ". Under these rules, an employee has first to earn leave admissible to him under the terms of employment. He is then given the option to surrender or not to avail of leave to his credit subject to the maximum number of days prescribed in the rules, within the block period of one year or two years, as the case may be. He will receive for the leave surrendered or not availed of, salary and allowances equivalent to what he would have received if he had availed of the leave surrendered. An employee has, therefore, the option either to avail of leave, and without working receive salary and allowances or to decline to avail of leave or surrender leave, receive leave salary and allowances and earn salary and allowances for the period he has not availed of leave but works. Under this scheme, an employee by surrendering or not availing of leave does not give up or surrenders his right to receive leave salary and allowances payable to him under the conditions of service. On the other band, in addition to receiving leave salary and allowances, he earns salary and allowances for the period as he actually works. The receipt of leave salary and allowances for the leave surrendered and the receipt of salary and allowances for the said period he works are relatable to the terms and conditions of employment. The leave salary and allowances are not paid to an employee outside the terms of employment or as damages because of repudiation of the contract of employment. In fact, this payment flows from the terms and conditions of employment by virtue of the post the employee holds. An employee who surrenders leave, gets salary and allowances for the period of leave surrendered and if he works for that period, he also gets leave salary and allowances for the said period. Learned counsel for the petitioners have not been able to satisfy us as to how this " leave salary and allowances " which is taxable when the assessee avails of leave, will not be taxable if the employee works during that period and earns more. The leave salary and allowances and the salary and allowances an employee receives for the same period are one and the same. The payment of leave salary and allowances to an employee who surrenders his leave is related to or flows from the relationship of employer and employee and from the terms and conditions of employment and falls within the meaning of the term " profits in lieu of salary "

under cl. (ii) of sub-s. (3) of s. 17 of the Act.

It was next urged for the petitioners that the Finance Act, 1982, has introduced s. 10AA in the Act, whereby the encashment of leave received at the time of retirement by an employee is exempt from tax liability and we have, therefore, to understand that the " encashment of leave " in so far as others are concerned is also not taxable.

By this amendment, it is only the " encashment of leave " an assessee receives at the time of retirement that is not taxable. The intention of Parliament is not to exempt the encashment of leave of all employees. The benefit given to a class of persons under s. 10AA cannot be given to the petitioners who do not belong to that class.

It was submitted on behalf of the petitioners that a taxing statute has to be construed very strictly.

The principle to be followed in the construction of a fiscal statute is expressed by Rowlatt J. in Cape Brandy Syndicate v. IRC [1921] 1 KB 64 12 TC 358 (KB) as follows:

" In a taxing statute one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. "

The Supreme Court has referred to this principle expressed by Rowlatt J. and has observed in Murarilal Mahabir Prasad v. B. R. Vad [1976] 37 STC 77, at P. 110, thus:

" The principle is variously expressed by saying that in fiscal statutes one must have regard to the letter of the law and not to the spirit of the law, that the subject cannot be taxed by inference or analogy, that in a taxing Act there is no governing principle to look at and one has simply to go on the Act itself to see whether the tax claimed is that which the statute imposes, that while construing taxing Acts it is not the function of the court to give to the words used a strained and unnatural meaning and the subject can be taxed only if the revenue satisfies

the court that the case falls strictly within the provisions of the law. The principle thus stated has hardly ever been doubted but it is necessary in the application of that principle to remember that though the benefit of an ambiguity in a taxing provision must go to the subject and the taxing provision must receive a strict construction that is not the same thing as saying that a taxing provision should not receive a reasonable construction.' "

Learned counsel for the petitioners highlighted the resulting harsh consequences of understandings. 10(l3A) as not exempting the persons residing in their own houses and understanding encashment of leave as

falling within the meaning of the expression " profits in lieu of salary " in s. 17(3)(ii) of the Act.

When the meaning of the words is clear and unambiguous, this court has to give effect to it whatever be the consequences, as the court has no jurisdiction to mitigate such harsh consequences, if any. It is only when the language used is doubtful or is capable of more than one interpretation courts will prefer to accept the one more favourable to the subject. It is not for the courts to give the words used in a statute a strained and unnatural meaning so that it would benefit the subject: Morvi Mercantile Bank Ltd. v. Union of India [1965] 35 Comp Cas 629 (SC).

We are satisfied in these cases that the petitioners are seeking the aid of the court to relieve them against express statutory provisions.

On the above discussion, we hold that:

(i) the H.R.A. received by the petitioners who are in occupation of residential accommodation belonging to them and not taken on lease cannot be taken as excluded in computing the total income; and

(ii) the encashment of salary received by the petitioners falls within the meaning of " profits in lieu of salary " under section 17(3)(ii) of the Act.

As all the contentions urged for the petitioners fall, these writ petitions are liable to be dismissed. We, therefore, dismiss these petitions and discharge the

rule issued in all these cases. But, in the circumstances of the cases, we direct the parties to bear their own costs.

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