

1966 Present : T. S. Fernando, J., and Sri Skanda Rajah, J.

THE COMMISSIONER OP INLAND REVENUE, Appellant, and
SOUTH WESTERN OMNIBUS CO. LTD., Respondent

S. C. 3 of 1965-Income Tax Case Stated, BRA/329

Income tax-" Outgoings and expenses incurred in the production of income "-Holders of stage carriage permits-" Gratuities " paid by them compulsorily in respect of categorised employees-Assessability to income tax-Motor Traffic Act, No. 14 of 1951-Motor Transport Act, No. 48 of 1957, as amended by Act No. 22 of 1961, ss. 12, 18, 40, 52-Income Tax Ordinance, ss. 11 (1), 12. The sums of money which stage carriage permit holders under the Motor Traffic Act No. 14 of 1951 are required to pay in respect of some of their categorised employees in terms of section 40 of the Motor Transport Act No. 48 of 1957 (as amended by Act No. 22 of 1961) are outgoings and expenses incurred in the production of income within the meaning of section 11 (1) of the Income Tax Ordinance. Although the payments bear the name of gratuities, they are in effect compulsory levies.

CASE Stated under the Income Tax Ordinance.

P. Naguleswaran, Crown Counsel, for the appellant.

H. W. Jayewardene, Q.C., with S. S. Basnayake, for the respondent.

Cur. adv. vult.

March 3, 1966. **T. S. FERNANDO, J.-**

The question upon which the opinion of this Court is requested arises upon the facts stated below :-

The respondent is a company which was the holder of certain stage carriage permits granted under the Motor Traffic Act, No. 14 of 1951. These enabled it to operate regular omnibus services on special routes.

The Motor Transport Act, No. 48 of 1957, which was enacted, inter alia, for the purpose of establishing a Transport Board called the Ceylon Transport Board to provide exclusive regular and occasional omnibus and other services, for the compulsory acquisition of property required for the purposes of the Board and for the termination of stage carriage permits in force under Act No. 14 of 1951 virtually made it impossible for the respondent to carry on its main business.

The Motor Transport Act, No. 48 of 1957, came into force on 31st October, 1957. Under section 12 of that Act the Minister was empowered to declare by Order published in the Gazette the date on and after which all regular omnibus services were to be provided by the Ceylon Transport

Board. The respondent, in anticipation of an Order under the said section 12, went into voluntary liquidation on 30th November, 1957. The Minister, by Gazette Order of 13th December 1957, in terms of section 12, declared 31st December 1957 as the date on and after which all regular omnibus services were to be provided by the said Board. It has to be noted that section 18 of the 1957 Act cast a duty on stage carriage permit holders to provide the omnibus services so long as their permits were in force, and a breach of this duty carried with it a liability to conviction for an offence and punishment therefor. Notwithstanding the decision of the respondent in respect of liquidation as from 30th November 1957, its duty to provide regular omnibus services therefore remained till 31st December 1957.

Compensation was payable under the 1957 Act in respect of property requisitioned or acquired for the Ceylon Transport Board, but section 40 of that Act as amended by Act No. 22 of 1961 made provision making it obligatory on holders of stage carriage permits to pay in respect of some of their categorised employees, who will hereinafter be referred to as qualified employees, certain payments of money. The respondent became liable under this section to pay in respect of qualified employees sums aggregating to Rs. 812,500. Section 52 of the Act enabled this Rs. 812,500 to be deducted from the compensation payable to the respondent for its property acquired for the purposes of the Ceylon Transport Board and this sum has been so deducted. The respondent, naturally enough as it appears to me, claimed to deduct this sum of Rs. 812,500 in the computation of its profits and income for the year of assessment 1957-58.

The question upon which our opinion is now required is whether the aforesaid sum of Rs. 812,500 which became payable, in terms of section 40, by the respondent in respect of its qualified employees and which, by virtue of section 52, was deducted by the Ceylon Transport Board from the compensation payable to the respondent constituted "outgoings and expenses incurred" by the respondent in the production of its income for the year of assessment in question.

While section 11(1) of the Income Tax Ordinance permits the deduction, for the purpose of ascertainment of profits or income of a person, all outgoings and expenses incurred by that person in the production thereof,

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section 12 does not permit a deduction in respect of (a) disbursements or expenses not being money expended for the purpose of producing that income and (b) any expenditure of a capital nature. It has been contended for the Commissioner that the sum of Rs. 812,500 was not expended for the purpose of producing the income of the respondent. On the other hand, it has been contended for the respondent that it was indeed a payment incurred by it in producing its income. Counsel for the Commissioner contended that, as the respondent ceased to carry on its business after 31st December 1957, the sum paid in terms of section 40 could not be claimed as a deduction as it was not an expenditure or disbursement for the purpose of producing its income. Alternatively, he contended that it amounted to expenditure of a capital nature. He relied mainly on the terms of the Statute, section 40, and argued that the respondent paid the sums of money to each qualified employee as a gratuity in respect of that employee's service. As he put it, as these sums were paid by way of gratuity, they were paid out of the bounty of the respondent's heart, and were not disbursements or expenses expended for producing the respondent's income. The expression "gratuity", as one ordinarily understands it, denotes a payment made voluntarily, its extent depending naturally as much on the inclination of the giver as on the nature of the services that may have been rendered by the recipient. In the context in which this expression occurs in section 40 it can hardly be contended, unless one adopts a cynical approach, that it carries with it its ordinary meaning. On the contrary, notwithstanding the employment of the word "gratuity", so far as the holders of stage carriage permits were concerned, these section 40 "gratuities" were none other than forced payments. We are therefore unable to gather any assistance on the point arising here from the case of *The Commissioners of Inland Revenue v. The Anglo-Breiving Co.*

Ltd.[1 (1925) 12 Tax Cases at 812.]and other cases which were all concerned with gratuities properly so called.

In a carefully prepared statement of reasons, the Board of Review, against the decision of which body the appeal to this Court has been preferred, in holding against the view for which the Commissioner has contended before us, has set out five characteristics of these section 40 payments. These five characteristics are: (1) the payments were compulsory ; (2) they were imposed because the stage carriage permit holders held permits under the 1951 Act; (3) the payments were to be made to the Ceylon Transport Board ; (4) they were to be made only in respect of employees who were employed in work connected with the providing of regular omnibus services ; and (5) the amounts of the payments were fixed by the section itself. The characteristics so enumerated, in their combined effect, deprive these payments of the essential quality of gratuities properly so called. Although they bear the name of gratuities, they are in effect compulsory levies. Moreover,, in this particular case, under section 18 of the Motor Transport Act, No. 48 of 1957, the respondent had a duty to provide omnibus services

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till 31st December 1957, and for that reason too it was entitled to claim that the amounts payable in terms of section 40 were outgoings incurred by it in the production of its income in the year of assessment concerned.

I would answer the question framed in the Case Stated and indicated earlier in this judgment in the affirmative, and order the Commissioner to pay the respondent's costs of this appeal.

SRI SKANDA RAJAH, J.-I agree.

Appeal dismissed.

- End -