

[1952] 21 ITR 22 (BOM.)

HIGH COURT OF BOMBAY

Commissioner of Income-tax

v.

Mrs. Durga Khote

CHAGLA, CJ AND TENDOLKAR, J.

IT REFERENCE NO. 21 OF 1951

SEPTEMBER 11, 1951

G.N. Joshi for the Applicant.

Palkhiwalla and **J. B. Kanga** for the Respondent.

JUDGMENT

Chagla, CJ.—The only question that arises on this reference is whether the assessee's income falls to be computed under Section 7 or Section 10 of the Indian Income-tax Act. The assessee Mrs. Durga Khote is admittedly a well-known film actress. In the year of account which is 1944 she entered into various contracts for serving with several film companies and the contracts were to the effect that her services were lent for the purposes of acting in different films at a certain remuneration fixed in the contracts. The contention of the Department was that her income represented "Salaries" paid by the various film companies and she should show her return under Section 7 and not under Section 10. On the other hand, the contention of the assessee was that her income arose out of the practice of her profession, which was that of a film actress, and, therefore, her return was rightly shown under Section 10. The Tribunal upheld the contention of the assessee.

Mr. Joshi's contention is that if you look at the terms of the contracts it is clear that a relationship of master and servant is established between the film companies and the assessee and according to him if that relationship is established then the assessee is a salaried servant of the film companies and the income she received was in the nature of her salaries. Now the mere establishment of relationship of master and servant is not sufficient when we are dealing with a person who is practising a profession because in the course of the practice of that profession it may become necessary for the person to get himself or herself engaged to a particular master temporarily. But even while he or she is so engaged he or she is really practising his or her profession and the service is merely incidental to that profession. The position is different when a professional person permanently accepts an employment and exchanges his profession for service. It is clear on the facts of this case that Mrs. Durga Khote was not giving up her profession and was not exchanging her profession for any service. It is in order to carry out her profession of a film actress that she entered into the various contracts with the film companies. Her employment was temporary and incidental to her profession and she had no intention permanently to engage herself with any company. She was completely fancy free after her contracts with the film companies were carried out to lend her services to any other company she desired. It is difficult to see how on the facts of this case it can ever be stated that she exchanged her profession for service and ceased to practise her profession and became a salaried servant of the various film companies, with whom she was working in order to practise her profession. Really speaking no authority is needed to establish this proposition, but there is a direct decision of English Courts in *Davies v. Braithwaite* [1931] 18 Tax Cas. 198. That was also a case of an actress and Rowlatt, J., with respect rightly laid down the principle which should be applied to cases of this sort and this is what the learned Judge says :—

" What I say is that it seems to me that where one finds a method of earning a livelihood which does not contemplate the obtaining of a post and staying in it, but essentially contemplates a series of engagements and moving from one to the other—and in the case of an actor's or actress's life it certainly involves going from one to the other and not going on playing one part for the rest of his or her life, but in obtaining first one engagement and then another, and a whole series of them—then each of those engagements could not be considered an employment, but is a mere engagement in the course of exercising a profession."

If Mr. Joshi were right then even when a lawyer engaged himself to conduct a case he would cease to be practising a profession and would be employed by his client for the purpose of conducting his case. I hope such a suggestion will never be made that a lawyer ever becomes a servant of his client by thus carrying out his work and ceases to be practising his profession.

The result is that we must hold that the assessee's income must be computed under Section 10 and not under Section 7 of the Income-tax Act. We, therefore, answer the questions referred to us in the following manner:—

Question No. 1 : Under Section 10 of the Act.

The second and the third questions do not, therefore, arise, and need not be answered. The Commissioner to pay the costs of the reference.