WHAT CONSTITUTES INCOME IN THE CONTEXT OF SECTION 4 INCOME TAX ACT 1967 AND JUDICIAL INTERPRETATIONS

ANURADHA A/P NARASAMULOO

MASTER OF CORPORATE LAW
UNIVERSITI UTARA MALAYSIA
DECEMBER 2013
WHAT CONSTITUTES INCOME IN THE CONTEXT
OF SECTION 4 INCOME TAX ACT 1967 AND
JUDICIAL INTERPRETATIONS

BY

ANURADHA A/P NARASAMULOO

A PROJECT PAPER SUBMITTED TO THE
GHAZALI SHAFIE GRADUATE SCHOOL OF
GOVERNMENT
UNIVERSITI UTARA MALAYSIA
IN FULFILLMENT OF THE REQUIREMENT FOR
MASTER OF CORPORATE LAW
Permission To Use

In presenting this project paper in fulfilment of the requirement for a Master of Corporate Law (LLM) from University Utara Malaysia, I agree that the University Library may make it freely available for inspection. I further agree that permission for copying of this project paper in any manner, in whole or in part, for scholarly purposes may be granted by my supervisor or in her absence, by the Dean of the Graduate School.

It is understood that any copying or publication or use of this project paper or parts thereof for financial gain shall not be allowed without my written permission. It is also understood that due recognition shall be given to me and to University Utara Malaysia for any scholarly use which may be made any material from my project paper.

Any request for permission to copy or to make other use of materials in this project paper, in whole or in part should be address to:

Dean of Research and Postgraduate Studies,

College of Law, Government and International Studies,

Universiti Utara Malaysia,

06010 Sintok,

Kedah Darulaman.
Abstract

The study in this project paper is quiet specific whereby the whole discussion revolves around section 4 Income Tax Act 1967 which defines income. Perusing the cases involving income tax, it is obvious that most of the cases revolve around issue of what constitutes income. This is due to the inadequacies of section 4 Income Tax Act 1967 in effectively defining income.

The objectives of this project paper is to discuss the current position involving this section and the definitions judicially elaborated by courts to help fill in the lacuna created by the inadequacies this section. It also involves comparative study with other jurisdiction namely with India and United Kingdom and recommendations to solve the problem namely amendments to the section in the form of adding provisos and illustrations.

As the study in this project paper is about what constitutes income in context of Income Tax Act 1967, major portion of the paper involves discussion on the issues which frequently goes to court for the much needed guide as to what forms income. This will greatly help individuals or organizations namely taxpayers looking for a clue of what section 4 Income Tax Act 1967 trying to classify. It will also give the readers an overview of what is income in revenue law.
Abstrak


Objektif kertas projek ini adalah untuk membincangkan kedudukan semasa melibatkan seksyen ini dan definisi kehakiman yang dihuraikan oleh mahkamah untuk membantu mengisi lacuna yang diwujudkan oleh kelemahan seksyen ini. Ianya juga melibatkan kajian perbandingan dengan bidang kuasa negara lain iaitu dengan India dan United Kingdom dan cadangan untuk menyelesaikan masalah ini dalam bentuk pindaan kepada seksyen ini dengan menambah proviso dan ilustrasi.

ACKNOWLEDGEMENT

I bow down to the omnipotent and omnipresent Divine, the Almighty GOD, in gratitude for blessing me with this precious opportunity and for bestowing me with confidence, strength, patience, and courage in completing this project paper. My gratitude and pranam to my spiritual master His Holiness Sri Sri Ravi Shankar, founder of Art of Living and International Association for Human Values for His blessings and guidance. His views on corporate social responsibility and the discussions tabled at World Forum on Business Ethics organized by His organization annually greatly helped me to understand and appreciate the subject better.

My heartfelt thanks and gratitude to my supervisor Puan Mumtaj Hassan for all her continuous guidance, suggestions and constructive criticisms to make this work a success.

I take this opportunity to extend my thanks and gratitude to all the lecturers who has taught and guided me throughout my journey in completing my study for Masters in Corporate Law.

I dedicate this work to the memory of my beloved father, late Mr. Narasamuloo Appanan and to my mother Mrs. Dunalekchemy Sannasy. Without her support, love, encouragement, sacrifice and prayers this may not been possible.

My deepest thanks and appreciation to my darling brothers Rajaram Narasamuloo and Dr. Kantha Rao Narasamuloo, my sisters in law Amutha Veerappan and Dr. Vinuthinee Naidu and my darling nieces K.Sanjhana Rao and R.Naghinaa Rao for all their love, support, inspiration and prayers.

Last but not least, I would also like to thank all my friends and my classmates who sailed this post graduate journey together for their love, support and encouragement. Without all of you this may not have been an enriching experience.
TABLE OF CONTENTS

Permission to Use                                                                                                          i
Abstract (English)                                                                                                         ii
Abstrak (Bahasa Malaysia)                                                                                         iii
Acknowledgment                                                                                                         iv

CHAPTER ONE:   BACKGROUND

1.1   Introduction                                                                                                        1
1.2   Problem Statement                                                                                                     2
1.3   Research Question                                                                                                     4
1.4   Objectives Of The Study                                                                                               5
1.5   Significance Of The Study                                                                                             6
1.6   Research Methodology                                                                                                 7
      1.6.1 Research Design                                                                                                  8
      1.6.2 Scope of the Study                                                                                               9
      1.6.3 Types of Data                                                                                                    9
      1.6.4 Data Collection Method                                                                                           10
      1.6.5 Limitation of the Study                                                                                          11
      1.6.6 Analysis of Data                                                                                                 11
1.7   Literature Review                                                                                                     12
1.8   Organization of the Paper                                                                                             14
CHAPTER 2: CLASSIFICATIONS OF INCOME AS PER JUDICIAL INTERPRETATION

2.1 Introduction 15
2.2.1 Intention of Parties 18
2.2.2 Sub-Division of Land 26
2.2.3 Land Owner Entering Into Transaction with Developer 26
2.2.4 Company Declaring Sale Profit as Profit and Gains Tax 27
2.2.5 Intention of Parties at the Time of Acquiring Property 27
2.2.6 Assets Enhancement and Stock In Trade 29
2.2.7 Money Withdrawn From Partnership 30
2.2.8 Compulsory Acquisition of Land by Government 32
2.2.9 Gift 35
2.2.10 Dividend 36
2.2.11 Sale of Shares 39
2.2.12 Interest Earned From Short Term and Long Term Deposit 43
2.2.13 Rent Received from Letting out Factory Building 44
2.3 Conclusion 45

CHAPTER 3: PROBLEMS ARISING FROM INEQUACIES OF SECTION 4 INCOME TAX ACT 1967 IN DEFINING INCOME

3.1 Introduction 46
3.2 Problems 48
3.2.1 Each Case Needs To Be Decided On Its Own Facts 49
3.2.2 Needs Extensive Proving Including Calling of Witnesses 47
3.2.3 No Clear Demarcation between Revenue and Capital 52
CHAPTER 4: COMPARISON WITH OTHER JURISDICTIONS

4.1 Introduction
4.2 Position in India
4.2.1 Section 14 Income Tax Act 1961
4.2.1.1 Income from Salary
4.2.1.2 Income from House Property
4.2.1.3 Profits and Gains of Business or Profession
4.2.1.4 Income from Capital Gains
4.2.1.5 Income from Other Sources
4.2.2 Compulsory Acquisition
4.3 Position in United Kingdom
4.3.1 Dividends
4.3.1.1 Charge to Tax on Dividends and Other Distributions
4.3.1.2 Income Charged
4.3.1.3 Person Liable to Pay
4.3.1.4 Details of Amounts Treated As Dividends
4.3.1.5 Date When Dividends Paid Under Section 386 of (Trading and Other Income) Act 2005
4.3.1.6 Interpretation of Sections 386 and 387 of (Trading and Other Income) Act 2005
4.3.1.7 Authorised Unit Trust Dividend Distributions
4.3.1.8 Determining Date when Dividends Paid For Under Section 389 80
4.3.2 Rental 80
4.3.2.1 Charge to Tax On Rent Receivable 81
4.3.2.2 Meaning of Rent Receivable 81
4.3.2.3 Rental Income on Which Tax Charged 82
4.3.2.4 Person Liable to Pay Tax for Rental Income 82
4.3.2.5 Meaning of Generating Income from Land 82
4.4 Conclusion 83

**CHAPTER 5: CONCLUSION AND RECOMMENDATION**

5.1 Introduction 85
5.2 Recommendations 86
5.2.1 Categories of Income 87
   a) Income 87
   b) Salaries 88
   c) Deductions from salary 89
5.3 Conclusions 94

References 95
CHAPTER ONE
BACKGROUND

1.1 Introduction

Income tax as everyone knows, at its onset forms an important part of everybody’s life, be it an individual, a company, an organisation, non-governmental organisation or country. Income Tax form part of revenue for government whilst tax payers see it as unavoidable expenses, pecuniary liability. Thus, as a matter of prudence it is very important to have a good working knowledge of what actually forms income that could be taxed and the exemption thereto.

Generally, Income Tax is the payment levied on the income of individuals and businesses including corporations or other legal entities. Various income tax systems exist, with varying degrees of tax incidence. It could be progressive, proportional or regressive. When tax is levied on the income of companies, it is often called a corporate tax or profit tax. Individual income taxes often tax the total income of the individual subject to certain exemptions. Various systems define income differently, and often allow notional reductions of income.

In Malaysia income tax is generally governed by Income Tax Act 1967 (Act 53/1967). Any particular dealing or transactions must come within the walls of scope of charge particularly as stipulated in section 3 of the act for it to be accounted to chargeable income tax. Any transactions or dealings that fall outside the scope of
The contents of the thesis is for internal user only
References


5. **Barr, Crombie & Co Ltd v Commissioner of Inland Revenue** 26 TC 406.

6. **Bernhard v CIR** 13 TC 723.


9. **BSC Footwear Ltd v Ridgeway** 47 TC 495.


11. **Cir v British Samson Aero Engine Ltd** (1938) 2 KB 482.

12. **CIT Bengal v Shaw Wallace & Co** (1932) 6 ITC 178.

13. **Commissioners of Inland Revenue v Fleming & Co(Machinery Ltd.** 33 TC 57.

14. **Commissioners of Inland Revenue v Glasgow and South Western Railway Co.** (1887) AC 315.

15. **Commissioners of Inland Revenue v Newcastle Breweries Ltd.** 12 TC 927.


18. **Deeny and Ors v Gooda Walker Ltd. and Ors** 67 TC 458.


21. *Duple Motor Bodies Ltd v Ostime* 39 TC 537.


28. *Glenboig Union Fireclay Co Ltd v Commissioners of Inland Revenue* 12 TC 427.

29. *Green v Gliksten and Son Ltd* 14 TC 364.

30. *Harry Ferguson (Motors) v IRC* 33 TC 15.


32. *Hudson’s Bay Co Ltd. v Stevens* (1905) 5 TC 437.


34. *In Higgs v Olivier* 33 TC 136.

35. *Investments Ltd. v DGIR* (1975) 2 MLJ 208.

36. *John Smith and Son v Moore* 12 TC 266.


42. *Leeming v Jones* 15 TC 333.


49. *Paget v Commissioners of Inland Revenue* 21 TC 677.

50. *Philip v West* 38 TC 203.


58. *Simmons v IRC* (1980) 1 WLR 1196


61. *Sun Newspapers Ltd v F.C. of T* (1938) 16 CLR 337.


64. *The Seaham Harbour Dock Company v Crook* 16 TC 333.

65. Thew v South west Africa Co. Ltd 9 TC 141.


