

THE CATEGORY OF “INCOME” IN THE ALIMONY LEGAL RELATIONSHIP: SEPARATE PROBLEMS OF RUSSIAN LEGISLATION

Dinara Anvarovna Musabirova
Kazan Federal University, The Republic of Tatarstan, the Russian Federation

ABSTRACT

This article presents and defines the notion and the criteria of the content of the category of “income” as a special inter-branch notion being widely used in the legislation of various industrial branches. The clarification of its nature is of great importance in order to apply this legal category in law-making and law enforcement, in the first place, to achieve maximum efficiency in complying with the balance of interests of the recipients of maintenance being known, as a rule, weak parties of alimony obligations. The features of the definition of “income” in the family and other branches of the national law have been detected. The theoretical researches of the scientists in this field as well as judicial practice of Russia are presented and analyzed. It is proposed to reform the existing income legislation as the basis of implementation of alimony obligations.

Keywords: *Alimony obligations; the notion of “income”; inter-branch relations; law of taxation; sale of property.*

1. INTRODUCTION

The legal definitions are an integral constituent part used by the legislator in creating and constructing normative material. As a rule, each branch of law has its own conceptual apparatus and operates personal definitive constructions. Thus, the notion of “income” is perhaps inherently, “genetically” more characteristic for law of taxation.

It is the rules of the main codified act of this branch - the Tax Code of the Russian Federation – that fix its official, legal content: “income is recognized as economic benefit in money or in kind, taken into consideration in the case of its possible evaluation and according as such benefit can be evaluated” (Article 41).

The clarification of the term formulated in this way is not free from deficiencies, the mention of which can be found in many specialized scientific papers. So, following the logic of the legislator, the notions of “profit” and “income” should be correlated as a part and the whole, however, these concepts are not discriminated in some cases, i.e. income is used both to refer to gross profit (including costs), and the reference to “net income” (i.e. profit in the classic sense of the word). This fact led to the criticism of the scientists in the field of financial and tax law [1, P. 9].

Some scientists pay attention to a failure of the device chosen by the legislator in the formulation of the definition of the notion under study via the term “benefit”. The meaning of “benefit” implies the existence of some advantages of one person towards another, improvement of his well-being [2, P. 413]. The present state of things does not allow to distinguish between the notions of “profit” and “income” and to find out the solution of the above confusion.

Fitting observation is also that the legal definition of “income” does not include a clarification of the criterion of irrevocability obtained by the taxpayer of the property increment and, therefore, under the strict interpretation of the rules of Article 41 of the Tax Code of the Russian Federation, the funds received, for example, under a contract of loan or credit should also be referred to income [3, P. 19].

Modern normative array in alimony legal relations does not allow to conclude with a certain degree of belief about the exact and complete filling of the revenue sources, on receipt of which the alimony payer is obliged to pay maintenance to the persons specified by law.

As the analysis of foreign literature indicates the normative material of other legal orders is not free from similar problems, in the Russian law of a variety of branches: tax for individuals [4] and legal persons [5], family and law [6], etc. Constantly changing economic and political situation in the world influences the formation of the concept and essence of the list of the profitable components [7, 8].

2. METHODS

According to the Constitution of the Russian Federation in order to create conditions for life of dignity and free development of man in the Russian Federation, a guaranteed minimum wage is established, state support for family, motherhood, fatherhood and childhood is provided (part 2 of Article 7); maternity and childhood and the family are under protection of the state; the care of children and upbringing are the equal right and duty of parents (parts 1 and 2 of Article 38).

Ensuring of the rights of children with adequate protection is one of the most important tasks of the state. This rule is contained not only in the Russian legislation but also in the international treaties and conventions. Alimony payments are of great social importance, the satisfaction of the vital needs of the child depends directly on them. It is of no importance who gets the alimony, the obligation to pay child support is indisputable.

The terminological apparatus of law is fairly considered to be one of the tools to achieve these objectives.

Many legal terms, notions and definitions legally defined for the first time and (or) used in one of the branches of law belong then to a different branch and are applied in other legal fields [9, P. 19]. All the more so that the same requirement is enshrined in law enforcement as well. For the purposes of the provisions of the Resolution of the Plenum of Armed Forces of the Russian Federation and the Plenum of the Russian Federation of June 11, 1999 № 41/9, the notions and terms of civil, family and other branches of legislation of the Russian Federation must be applied in the sense in which they are used in the original branches, unless clear provision for that in the law [10].

In view of the mentioned systemic character of the law, the definition of “income”, being tax and legal category by its nature, is actively used in the legal regulations of other branches of law. Without claiming to completely and comprehensively review the inter-branch relations arising in connection with the use of the notion of “income”, in this article we will touch upon only a few aspects of this concept - alimony in legal relationships.

3. RESULTS

As close as possible to the specified notion in the Tax Code of the RF, the notion is used in the norms of the Criminal Code of the Russian Federation in the field of prosecution for illegal business. However, its content is enshrined not in the text of the very Criminal Code of the Russian Federation, and in the act of judicial practice: part 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated of November 18, 2004 № 23 [11] provides that income in Article 171 of the Criminal Code of the RF should be understood as proceeds from the sale of goods (works, services) for the period of the illegal business activity without any deduction made by the person of the costs associated with the implementation of the illegal business activities.

The category of “income” is widely used in civil law. In the most general sense, the notion of “income” refers to denote yield, products and incomes, considering yield to be “the products of organic development of both animate (animals) and inanimate things”, followed by the essence of another similar notion in both sound and content – “products”- it is used to refer to anything that is received as a result of the productive use of a thing, whether it is a finished product or semi-finished material for further processing” [12, P. 262].

It should be noted that within the same industry the notion of “income” can have several meanings at once. We can meet especially large variety of charging of the term in the family and legal norms, in particular in the analysis of the Resolution of the RF Government of July 18, 1996 № 841 “On the List of types of wages and other income from which minor children are maintained” (hereinafter - Resolution № 841) [13].

Income for child support purposes is recognized, in particular, in all kinds of salary (remuneration, support) and additional remuneration on the main place of work and for part-time work, which parents receive in cash (rubles or foreign currency) and in kind, all types of pensions with consideration for monthly increases, bonuses, promotions and bonuses to them established to separate categories of pensioners, with the exception of survivor's pensions paid by the federal budget, and pay for them at the expense of the budgets of the Russian Federation; scholarships; temporary disability benefits, unemployment only by judgment order for alimony or a notarized agreement on the payment of alimony, etc.

Such content of the notion of “income”, by fixing the list of sources of revenue base, led to the emergence of a number of legal disputes.

So, the reason for hearing of one of the cases in the Constitutional Court of the Russian Federation was the complaint of citizen L. R. Amayakyan. According to «3» p. 2 of Resolution № 841 (in the version being in force at the time of filing the complaint), the alimony deduction is made from the income from entrepreneurial activities without a legal entity.

Citizen L. R. Amayakyan being an individual entrepreneur, who applies the simplified taxation system, considered it illegitimate that it is in arrears in the payment of maintenance for the minor child was calculated from the income from entrepreneurial activities without deducting from there the expenses incurred in connection with the implementation of this activity.

This judicial body, however, recognized this item to be corresponding to the fundamental law of the state, pointing out that the tax law does not regulate the relations connected with the payment of child support [14]. At the same time, there was made a very interesting clause that such a state of affairs, however, does not release the federal legislator from the obligation to specify within the framework of his discretionary powers the order of implementation arising from the p. 2 article 38 of the Constitution of the Russian Federation the parental responsibility, including with regard to the payment of maintenance for minor children by individual entrepreneurs who are referred to the simplified taxation system and the object of the tax revenues.

This is what the legislator has done by amending the above-mentioned item, updating the content of this paragraph as follows: “with income from entrepreneurial activities without establishing a legal entity, defined less the amount of incurred expenses associated with business activities”. Thus, the legislator in this part nevertheless considered it possible to extend the application of tax law in family law relations.

Another stumbling block in the text of the Regulation is the wording of sub-clause in p. 2: “from the amounts of income received under contracts concluded in accordance with the civil law as well as from

the implementation of copyright and related rights, the income received for the execution of works and services, provided by the legislation of the Russian Federation (notary, attorney activities, etc.)”.

As rightly noted in the literature, with the literal interpretation of this subparagraph, the alimony, recovered as a share of income would have to be held from the amounts received to the debtor, for example, from the sale of his property (apartment, car, etc.) [15, P. 116]. This in turn confirms the conclusion that “the notion of income received under civil contracts in terms of the calculation of alimony enforced as a share of income of the debtor is absolutely uncertain” [16, P.: 22].

Unlike the previous judicial precedent reviewed, the Constitutional Court of the Russian Federation does not draw a line in this situation.

Examining the constitutionality of this provision, the court came to the following conclusions: the alimony shall be deducted from the proceeds of their payer only for those concluded in accordance with the civil law contracts, by concluding, the person realizes the right to be entitled to everyone to freely use the abilities and property for economic activities not prohibited by the law as well as the right to work (part 1, article 34, part 1, article 37 of the Constitution) [17].

4. DISCUSSION

Despite the fact that the Tax Code of the Russian Federation gives a special interpretation of the term under study, the analysis of practice of its application leads to the conclusion that the meaning varies considerably depending on the industry sector of a particular legal relationship.

Thus, income is considered to be the receipt of the transaction, which the court finds to corresponding to the above criterion , therefore, the resolution of a particular dispute will depend on the discretion of the law enforcer. Does such a conclusion allow to say that the concept of “income” has actually acquired the character of the evaluation? It seems so, because interpretation of a specific transaction and the income derived from the transaction will depend on the discretion of the law enforcer on the basis of specific data in certain situations.

However, whether such a situation is appropriate is the issue completely different, because due to the ambiguity and vagueness of legal provisions, it may lead to a breach of the principle of establishing by law the object of taxation.

The conclusion indicated above has been drawn on the fact that the basis of legal regulation of relations arising in connection with the enforcement of duties of parents to maintain their minor children is the requirement to balance the interests of both parties of alimony relations. Some researchers consider directly the dependence of the revenue base and the state of the situation of children in the family [18].

The next argument is that such income does not have the character of periodicity. Indeed, the sale of the property is a one-time in nature, at the same time the analysis of the same Resolution № 841 leads to the conclusion that the same criterion of periodicity does not meet the categories of income such as the sub-clause “e” (from the amounts paid for the period of employment of being redundant because of liquidation of an organization, implementation of measures on reduction the number or staff); “и” (from the revenues from the lease of the property); “к” (from the income from shares and other income from the participation in the management of the property of the company (dividends, equity unit shares, etc.), etc. Therefore, such feature cannot be the basis of delimitation of income within the meaning of Resolution № 841 .

Another reason in favor of the illogicality of this argument can be found in e practice of courts of general

jurisdiction. In particular, when investigating the circumstances of the case, the Presidium of the Moscow City Court recognized the income, by implication of sub-clause on p. 2 of Resolution № 841, to be interests accrued from the deposit amount as income under bank deposit contract [19].

In the literature, to correct such inaccuracies in legislative wording it is proposed to change sub-clause “o” of p. 2 of Resolution № 841: “it should pointed out to the debtor's income from the execution of works and provision of services under civil law contracts – the contractor's agreement and similar agreements” [20, P. 116].

However, in such a situation, it appears that there is infringement of the rights of the recipient of alimony in cases when alimony payer still received a one-time income from the sale of property, such as real estate. It seems that the legislator should clarify the wording of sub-clause rules on p. 2 of Resolution № 841, by having provided for the right to use tax and legal content of the term “income” specified in article 41 of the Tax Code. This is the case, in our view, when the balance of interests of both parties of alimentary legal relationship will be respected in the most equitable way.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

REFERENCES

1. Nikolaeva E.S. *Income determined by the contract of movable property as an object of taxation: financial and legal aspects: the author's abstract of dissertation for the candidate of jurisprudence / E.S. Nikolaeva. – Saratov, 2011. – P. 9 .*
2. *Taxes and Taxation: Textbook / Edited by M.V. Romanovsky and O. V. Vrublevskaya. – SP., 2001. – P. 413 .*
3. Churkin A.V. *Disadvantages of the notions «income» and «profit» as the objects of taxation in the aspect of analysis of separate provisions of chapters 23 and 25 of the Tax Code of the RF / A.V. Churkin // Modern Law. – 2002. – № 6. – P. 19 .*
4. Simons H. *Personal income taxation: The definition of income as a problem of fiscal policy / H. Simons // University of Chicago Press, 1938 .*
5. *Influence of the size of revenue direct taxation salary for different categories of taxpayers // Analele Universității Constantin Brâncuși din Târgu Jiu: Seria Economie. – 2013. – № 4 (4). – P. 200-204 .*
6. Dogliotti M. *Obbligo alimentare e prestazione Assistenziale // URL: https://openlibrary.org/authors/OL613057A/Massimo_Dogliotti (дата обращения: 11.09.2016)*
7. José A. Pierri *The income concept in classical applied to the study of agrarian conflict in 2008 European Journal of Operational Research. – 2011. – № 11(22) . (*
8. Christian Frey, Christoph A. Schaltegger *Progressive taxes and top income shares: A historical perspective on pre- and post-tax income concentration in Switzerland // Economics Letters. – 2016. – September .*
9. Chelyshev M.Y. *The system of inter-branch relations of civil law: civil investigation: the author's abstract of dissertation for candidate of jurisprudence / M.Y. Chelyshev. – Kazan, 2009. – P. 19 .*
10. *On some issues linked to the introduction of the first part of the Tax Code of the RF: the Resolution of the Plenum of the SC of the RF and the Plenum of the SAC of the RF of June 11, 1999 № 41/9 // Herald of Supreme Court of Arbitration of the Russian Federation. – 1999. – № 8 .*

11. *On court practice of illegal business and legalization (laundering) of cash means or other ill-gotten property: the Resolution of the Plenum of the Supreme Court of the RF of November 18, 2004 № 2 // Bulletin of the Supreme Court of the RF. – 2005. – № 1 .*
12. *Civil Law: Textbook / Chief Editor Y.K. Tolstoy, A.P. Sergeev. – M., 2005. – P. 262 .*
13. *On the List of types of wages and other income from which minor children are maintained: The Resolution of the Government of the RF of July 18 1996 № 841 // The Collection of Laws of the Russian Federation. – 1996. – № 31. – Article 3743 .*
14. *On examination of the constitutionality of sub-clause «3» of provision 2 on the List of types of wages and other income from which minor children are maintained, in connection with the complaint of citizen L.R. Amakyan: the Resolution of the Constitutional Court of the Russian Federation of July 20, 2010 № 17-II // Bulletin of the Constitutional Court of the RF. – 2012. – № 5 .*
15. *Shelyutto M.L. Application of the sub-clause «o» of provision 2 on the List of types of wages and other income from which minor children are maintained // Case comment / Edited by K.B. Yaroshenko. M.: Legal literature, 2012. – Issue 17. – P. 116 - 124 .*
16. *Sharon A.L. The problem of defining the notion «income» in resolution of the issue on alimony / A.L. Sharon // Practice of executive production. – 2009. – № 1. – P. 22 – 24 .*
17. *On the complaint of citizen Gnilomedov Vladimir Nikolayevich on violation of his constitutional rights in sub-clause «o» of provision 2 on the List of types of wages and other income from which minor children are maintained: definition of the Constitutional Court of the RF of January 17, 2012 № 122-O-O // SPS«Consultant Plus . «*
18. *Jason M. Fletcher, Barbara Wolfe The importance of family income in the formation and evolution of non-cognitive skills in childhood Economics of Education Review. – 2016. – Volume 54. – P. 143–154*
19. *The Decree of the Presidium of the Moscow City Court of August 13, 2010 on № 442-138 // SPS «Consultant Plus . «*
20. *Shelyutto M.L. Application of the Sub-Clause «o» of provision 2 on the List of types of wages and other income from which minor children are maintained // Case comment / Edited by K.B. Yaroshenko. M.: Legal literature, 2012. – Issue 17. – P. 116-124 .*