

(1929) 08 CAL CK 0049
In the Calcutta High Court

In Re: Bijay Singh Dudhuria

Date of Decision : 12-08-1929

Acts Referred:

Income Tax Act, 1842 — Section 102, 60
Income Tax Act, 1961 — Section 33

Citation : AIR 1930 Cal 641 : 129 Ind. Cas. 782

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J;Buckland, J

Bench : Full Bench

Judgement

Rankin, C.J.—The question in this case arises out of the assessment to income tax made upon Raja Bijay Singh Dudhuria of Azimganj in the year 1924-25 and the year of account is 1923-24.

2. The assessee submitted a return of his income, in the ordinary way as an individual and the income tax Officer, on 16th March 1925, assessed him at a figure of Rs. 1,12,005 after allowing him a deduction of Rs. 9,900 in respect of the fact that he had paid a sum of Rs. 1,100 per month to Sreemati Sugankumari Bibi, his stepmother. This sum of Rs. 9,900 represented the proportion of the amount so paid by the Raja, attributable to his assessable income, as distinct from his agricultural income, which is not liable to income tax. The deduction was attributed to several heads of assessable income as follows:

Total Deductions. income. Rs. Rs. Rs.

Interest on securities.	8,040	633	7,407	Property ...	36,110	2,970	33,140
Dividends ...	9,317	728	8,589	Business ...	66,611	5,420	61,191
Other sources ...	1,827	149	1,678	-----	-----	-----	-----
				Total ...	1,21,905	9,900	
				1,12,005	-----	-----	-----

3. The Raja made no objection to this assessment, but in January 1926 the Commissioner of income tax, Bengal, reviewed the assessment u/s 33, income tax Act, and, after notice to the Raja, and after hearing him, came to the conclusion that the deduction of Rs. 9,900 which had been allowed should be disallowed and directed that he be assessed on a total income of Rs. 1,21,905.

The occasion for this review of the original assessment was an objection by Sreemati Sugankumari Bibi to an assessment made upon her in respect of the maintenance allowance of Rs. 1,100 per month before mentioned. It would appear that the lady lives at Bikanir, but that the income tax Officer at Murshidabad purported to assess her through the Raja, as her agent, and had made an assessment upon the monthly sum of Rs. 1,100 on the footing that it was an annuity taxable as salary under Sub-section 1, Section 7 of the Act. The lady very naturally objected that the Raja was not her employer and the Commissioner very properly accepted this contention. Apart from this however the lady maintained that she was not liable to be assessed at all and the Commissioner of income tax, in accordance with a contention pressed upon him on behalf of the lady, held that the Raja and she were both members of an undivided Hindu family of which the Raja was the manager. Accordingly, he cancelled the assessment on the lady and added to the Raja's assessment the sum of Rs. 9,900.

4. The Raja took divers exceptions to the Commissioner's order. Some of these exceptions had reference to questions of procedure; others were on the merits. The Raja contended that he was liable to be assessed as an individual and that he and the lady were not members of an undivided Hindu family. He maintained that the deduction originally made by the income tax Officer was a deduction to which he was entitled.

5. In February 1927 the Commissioner of income tax made a reference to this Court upon two questions of procedure and gave reasons why the other questions which he had been asked by the Raja to refer were not, in his opinion, proper to be referred by him. Upon this reference coming before the Court the Court exercised its power under Clause (4), Section 66 of the Act and, by consent of counsel on behalf of the assessee and on behalf of the Crown, sent the case back to the Commissioner, directing him to find the necessary facts to enable the Court to decide:

whether it should have been held that the Raja was entitled to the exemption claimed by him.

in other words to decide the merits of the matter. Accordingly, the Commissioner, in November 1928, has stated the facts and given his opinion upon this question.

6. According to the case stated, the Raja is by caste a Jain and is governed by the Mitakshara School of Hindu law. His father, Ray Bishen Singh Dudhuria Bahadur, died in 1894, leaving him surviving his only son (the Raja) and a widow, Sreemati Sugankutnari Bibi, who is the stepmother of the Raja. At the time with which we are concerned the Raja had no son, though a son has since been born to him. Ray Bishen Singh Dudhuria Bahadur appears to have died intestate. He left considerable properties, and, some time after his death, the widow brought a suit in this Court against the Raja, claiming maintenance and suitable accommodation for her residence, out of the properties which had

belonged to her deceased husband. This suit was compromised and, by the consent decree, the Raja was directed to make over to her a certain house for her residence and to pay out of the estate the sum of Rs. 1,100 per month for maintenance together with certain arrears of maintenance. The Raja has been regularly paying the monthly allowance as decreed and, in the year of account with which we are concerned, he paid in all for this purpose Ra. 13,200. It is agreed that Rs. 9,900 represents the same proportion of Rs. 13,200, as the assessed income of the Raja bears to his total income, including agricultural income. In these circumstances the Commissioner is of opinion that the Raja and the lady are members of an undivided Hindu family and that the total income of the family is assessable in the hands of the Raja as manager thereof, no deduction being permissible in respect of the maintenance paid to one of the members. Further, and in the alternative, he is of opinion that the maintenance paid to the widow is on the same footing as the maintenance provided by the assessee for his wives and daughters and is a personal expense of the assessee and cannot be held to be a charge upon his estate for the purposes of assessment to income tax.

7. At the hearing before us the learned Advocate-General abandoned the contention which found favour with the two Commissioners of income tax, who have dealt with the case, that the Raja and the widow were members of an undivided Hindu family. He accepted the position that the Raja was liable to be assessed as an individual and in no other manner. He contended however that on this footing there is no provision in the Act by which he can claim to deduct a sum of Rs. 9,900 on the ground that it had been paid by him to his stepmother for her maintenance.

8. The decree of the High Court in the suit by the widow against the Raja has not been included in, or made part of, the case stated by the Commissioner or of the additional statement of facts made by him. In the Raja's petition to the Commissioner of income tax it is stated that:

by the said decree the payment of the said sum was made a charge on your petitioner's estate,

but this very important fact has been omitted from the case stated. Before us however it was not disputed that the lady's maintenance was a legal liability of the Raja arising by reason of the fact that the Raja is in possession of his ancestral estate, that it is payable out of such estate and that this Court had declared that the maintenance was a charge thereon in the hands of the Raja. The general Hindu law upon this subject has been laid down in the case of *Bai Daya v. Natha Govindlal* [1885] 9 Bom. 279. The position therefore is and the case must in my judgment be dealt with on the footing, that the lady has a charge which extends not only to the zamindari property of the Raja, but covers each of the five heads of property between which it was allocated in the original order of assessment, dated 16th March 1925.

9. In these circumstances, I am not of opinion that anything turns upon the fact that the person entitled to the benefit of the charge is the Raja's stepmother. It has been suggested in argument, and the suggestion finds place in the Commissioner's observations in the case stated, that substantially speaking, and upon the question of merits, the Raja's liability to provide maintenance for his stepmother is of the same kind as his liability to provide for his wives and daughters. This contention is, I think, unsound. We are proceeding on the footing that the Raja is to be assessed as an individual. Whether this be right or wrong, it is the common case of the parties before us, and on that footing the Raja's position is, I think, the same, as if he had received his various properties, securities and businesses under a bequest from his father upon the terms that these assets were charged with an annuity for the maintenance of the widow. We are not dealing here with a charge created by the Raja for the payment of debts, which he has voluntarily incurred. The Raja is, by virtue of an exceptional and peculiarly extensive charge, an owner of incumbered property and the question before us requires us to ascertain the law applicable to a case, where the income from property, securities business, etc., is subject to a charge for an annual sum. In the present case, it would doubtless have been open to the Court, had circumstances required it be raise and set apart out of the estate a capital sum to answer the right of the widow to her annual maintenance : see *Hemanginee Dassee v. Kumode Chancier Dass* [1898] 26 Cal. 441 and in any case should default be made in paying the annual sum, it would be open to the Court in a suit to enforce the charge, to appoint a receiver of the properties and give him directions, if necessary, for sale of a sufficient portion thereof. I do not think, however, that the present question is complicated by the fact that the lady's charge is not confined to the income of the estate, but extends to the corpus. Where the income is sufficient it is clearly the usual business course to meet this claim out of the income. A similar question was raised and dealt with by Lord Macnaghten in his speech in the House of Lords in *London County Council v. Attorney-General* [1900] 4 Tax. Cas. 265. The cases are not absolutely on all fours, but in this case it seems to me that it would be paradoxical, merely because the lady can in case of default resort to the corpus of the property to say that it is right and proper, before default and merely for the purpose of computing income tax, to treat her annuity as payable rateably out of the capital and the different branches of the income.

10. What then is the provision made by the income tax Act (11 of 1922), as regards the liability to tax of a person whose income is incumbered in this way with the payment of an annuity? Clause 4, Sub-section (1), Section 9 deals with a similar matter but the scheme of the Act with reference to cases of this type, is, by no means, easy to discover. In the speech of Lord Macnaghten in the case to which I have already referred, there is a short account of the manner in which this question has been treated by the English income tax Acts. From this it would appear that the English Acts have always dealt with this question in express terms. Before 1803, there was a provision for deduction of such payments. After

1803, such deductions were prohibited and the tax-payer, liable to an annual payment, was authorized to deduct and retain the tax upon the payment which he was bound to make. It seems to be clear that, in England, the principle of taxation at the source would be employed. In a case like this, the taxpayer liable to pay the annuity would pay upon the whole of his income, without; deduction therefor, but would be entitled to pass on the incidence of the tax, by deducting the amount thereof, when he made payment to the annuitant. Under the Indian Act, taxation at the source is not unknown. Firms are taxed and the partner is not charged again upon his share of income; companies are taxed and the shareholder is not charged again upon his dividend; Hindu undivided families are taxed and the individual member is not charged again upon his share. Again, deduction of tax at the source, is provided for by Section 18, in the case of salaries and interest on securities, the payer being authorized and required to deduct the tax and himself to make payment to Government of what he has deducted. The present case is wholly untouched by any of these provisions. Accordingly, a good many considerations have to be weighed, before it can be decided whether the owner of property or business or securities subject to a charge for an annuity can get any allowance in respect of his liability. Assuming, for the present purpose, and contrary to the contention of Sreemati Sugankumari Bibi, that we are not here dealing with the case of an undivided Hindu family, and assuming further, without deciding, that the lady, although a resident of Bikaner is chargeable under the Act, her case would seem to come within the provisions of Section 19 and tax on her income to be payable by herself direct. No doubt machinery is provided by Sections 40 to 43, whereby the assessment might be made upon a trustee in British India; but even if the Raja can be deemed her agent or trustee, the basis of any such assessment would be that the lady's income was being assessed in effect upon herself. We are solely concerned with the Raja's own liability to be assessed upon the sum in question, as part of his own income:

If the Crown, seeking to recover tax, cannot bring the subject within the latter of the law the subject is free : Per Lord (sic) Partington v. Attorney General [1869] 4 H.L. 100.

11. But the Court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the Act upon a matter of this character and importance.

12. If each head of income, in this case, be taken separately and the annuity regarded as a charge upon each, the case would stand as follows:

As to interest on securities, u/s 8, the question is whether the whole amount brought to charge is "interest receivable by him." I cannot see that there is any provision which would enable the assessee to make a deduction in respect of this annuity.

13. As to dividends, the charge falls upon "any sum which he receives by way of

dividend" [Section 14(2)]. The same reasoning applies to this.

14. As income tax is deducted at the source or taxed at the source in these cases, the assessee, if he established a right to treat any part of the income as belonging to the lady and not received or receivable by himself, would gain no advantage except for super-tax purposes or unless it made a difference to the rate of charge.

15. As regards property, u/s 9, the first question is whether the Raja is the owner of the property. If he be the owner, as he certainly is, then the charge is to be upon him, on the basis of the bona fide annual value, less certain deductions specifically provided for Clause 4 says:

where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent

may be deducted. These words cannot, in my opinion, be stretched to include the present case. The departure from the language of the English Acts is very noticeable here. The object of the legislature in making this provision may have been any one of many different things. It may, for example, be a recognition of the fact that it is common to buy property with borrowed money raised on security of the property so bought.

16. u/s 10 the first question is whether the Raja is a person who carries on a business. If so he is liable, according to the section, and, in my opinion, it is clearly impossible to make room for a deduction on the ground that he has to pay this annuity out of the profits, Prima facie the destination of profit is irrelevant.

17. u/s 12, as regards "other sources" the language employed by the legislature is less precise. The provision for deduction gives a right to the assessee to

an allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning, such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

18. This annuity cannot, in my opinion, be regarded as a personal expenditure of the assessee, treating him as an individual, whose property is subject to a charge for this annuity. But the payment does not otherwise come within the exception. It may be said that the income, profits and gains mentioned in Sub-section (1) means, when read with Section 3 of the Act "income, profits and gains of the individual," namely of the assessee, and that, under this section, a deduction might be made upon the general principle that money payable to the lady is not income of the Raja. It happens that the total income of the Raja under this head is small, namely Rs. 1,678. I do not think however that, on this ground, the deduction can be allowed either u/s 12 or under any other section. In *Attorney-General v. London County Council* [1900] 4 Tax. Cas. 265, Lord Davey, with reference to Sections 60 and 102, income tax Act, 1842, said:

It is not open to doubt, and was not disputed, that Sections 60 and 102 alike mean that the person paying the yearly interest may deduct and retain the amount of the tax for his own benefit, and the schema of the Act is so far clear, and is in favour of the tax-payer. It was, no doubt, considered that the real income of an owner of encumbered property, or of property charged (say) with an annuity under a will, is the annual income of the property less the interest on the incumbrance or the annuity; and the mortgagee or annuitant and the owner of the property are, in a sense, entitled between them to the income.

19. Lord Davey, in this passage, is giving expression to a principle which he finds applied in the sections which he is construing. He is not saying that this is a principle to which income tax Acts are to be made to bend or even a presumption that is to be imported into them, where this is not impossible. In the case stated there is no information as to the nature of the "other source" the income of which is assessed at Rs. 1,678. The assessee has made no specific case upon this head and it would, I think, be wrong to apply Lord Davey's language blindly or in the dark to this head of income. Cases under this head may be of almost any kind. Suppose, for example, the income in question comes from the letting out of leasehold property upon agreements made with the assessee for a monthly rent to be paid to him by the sub-tenants; could it be said of the net rents so produced that in part or in whole they are not "income, profits or gains" to him, because his father's widow has a charge for her annuity upon all the assessee's property? I think not. It may, in a sense, be true that income is not "real income," unless the individual in question is able to control it for his own purposes or to absorb for himself the whole of the benefit thereof. But I do not see that the Court can, in interpreting this Act, engage to give it the result required by this line of argument. Nor that the annuitant in a case like this can be regarded as joint owner of the income in a legal sense consistently with the machinery and purposes of the Act.

20. Into the questions which might arise, if an attempt were made by the income tax authorities to recover tax a second time from the lady, we are not required to enter. As this decision is being given upon a footing to which the parties before us have agreed, but from which, as I understand, the lady dissents, it is inadvisable, upon this aspect of the matter, to say anything here.

21. In my opinion the question, whether it should have been held that the assessee was entitled to the exemption claimed by him, should be answered in the negative, but having regard to the position taken at different times by the income tax authorities I am of opinion that the assessee is entitled to the costs of this case stated.

C.C. Ghose, J.

22. I agree.

Buckland, J.

23. I agree.