

(1945) 04 CAL CK 0012
In the Calcutta High Court
Case No : No. 12 of 1942

IN THE MATTER OF JYOTIRINDRA NARAYAN SINHA CHOWDHURY.

Date of Decision : 12-04-1945

Acts Referred:

Citation : (1945) 13 ITR 263

Hon'ble Judges : Derbyshire, C.J;Gentle, J

Bench : Division Bench

Judgement

DERBYSHIRE, C.J. - This is a reference by the Board of Agricultural income tax for Assam u/s 28 (2) of the Assam Agricultural income tax Act of 1939. The reference purports to set out the facts of the case and then formulates the question of law giving thereafter the opinion of the member of the Board making the reference.

This is one of the first references made under this Act and probably due to lack of previous experience the case is not stated in the manner in which cases are stated under the Indian income tax Act. In the facts of the case reference is made to certain letters and to certain orders made departmentally, and certain facts are stated in the opinion of the member which are derived from certain departmental figures given in previous returns. The form of the first question is one which makes it difficult for us to give the answer, but we propose to give the answer to the question which relates to the liability to tax of the sum of question for this particular year and to give our reasons for the same.

The assessee is Mr. Jyotirindra Narayan Sinha Chowdhury, a zemindar, owing the Parbatjoar Estate, P. O. Bagribari in Assam, and the reference arises with regard to an item of Rs. 7,934 which has been included in the assessee's income tax return for the year of assessment 1941-42. In the assessment order set out at pages 11 and 12 of the paper-book, the item in question is recorded in this way :-

Rs.

"Salami (not included in return)

9,332

Less collection charges 15 per cent."

1,398

7,934

The assessee did not include this item in his return originally for the reason set out in his letter to the Agricultural income tax Officer of Gauhati, dated September 9th, 1941, in which he stated :

"In Schedule A of the return under column 6 (ii) only the mutation fees, etc., have been shown, but the amount collected as salamis or premia for waste land and abandoned holdings, viz., Rs. 9,331-9-4 pies, has not been shown as under law the amount will not be subject to assessment."

On receipt of that letter the assessee was asked why the item in question would not be subject to assessment and he replied by a letter dated October 6th, 1941, as follows :

"I have the honour to submit a statement as following with regard to your queries :-

1. Salami - Salami of waste land or abandoned holding is not an income. At the time of settlement of waste land or abandoned holding the rate of rent is fixed at the rate of 11 annas per bigha plus usual local rate. This rate of rent is never changed. Salami increases or decreases according to the demand of the land which cannot be regarded as part of the rent in any view."

That sets out the dispute between the assessee and the income tax Board. There is one further matter to which I must refer. The total agricultural income is assessed by the income tax Officer for the year in question at Rs. 89,633 which includes the item of Rs. 7,934, referred to previously. The Board in their letter of reference state that in the two years previous to the year of assessment the receipts from salamis were respectively Rs. 9,527 and Rs. 3,258. The assessee contends that the salamis in question are in the nature of capital receipts and therefore not income. The definition of "agricultural income" given in Section 2 (a) (1) of the Act so far as it is relevant in this case is :

"Agricultural income means any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Crown as such."

The rest of the definition is not relevant but is substantially that of "agricultural income" contained in the Indian income tax Act. The assessee has referred to the Privy Council case of Raja Bahadur Kamakshya Narain Singh v. Commissioner of income tax, Bihar and Orissa. In that case the landlord has granted a lease to certain persons in respect of one coal mine and the payments to be made were (1) salami or premium, (2) a minimum royalty, and (3) royalties per ton. The

question arose whether the landlord could be assessed to income tax under the Indian income tax Act in respect of the royalties. He was not assessed in respect of the salami or premium and their Lordships of the Privy Council, Lord Wright delivering the judgment, said at p. 190 as follows :-

"The salami has been rightly, in their Lordships opinion, treated as a capital receipt. It is a single payment made for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lease. That general right may properly be regarded as a capital asset, and the money paid to purchase it may properly be held to be a payment on capital account. But the royalties are on a different footing."

The lease in question stated as follows :-

"In consideration of the salami or premium of Rs. 37,040 being at the rate of Rs. 40 per standard bigha on 926 bighas in respect of the premises the lessor would grant to the lessees all and singular the underground coal mining rights of and in all those lands and premises specified in schedule hereto and all the estate right title interest claim and demand of the lessor into and upon the same and every part thereof with full liberty and power to the lessees to search for, work, make merchantable and carry away the coal there found and also liberty and power for the purposes aforesaid, and all other purposes connected therewith to dig, sink, drive, make, repair, and use all such pit shafts, drifts, levels, water gates, etc., and to form and erect engines, machinery, dressing floors, buildings, workshops, store houses, cottages, godowns, coke ovens, furnaces, etc., and to form all such railways and tramways and other roads and communications, spoil heaps and other conveniences in, over and under the said lands as may be necessary in the premises and to hold the same for a period of 999 years from December 1st, 1915, paying them certain minimum royalties per ton of coal."

Their Lordships agreed, that salami, that is, the premium paid in respect of that lease was payment on capital account and not subject to income tax. It is obvious that in that case the salami was in respect of a lease which permitted waste in the legal sense to be committed on the land and so diminished its capital value.

Reliance was also placed upon the case of *Sri Sri Raja Shiva Prasad v. The Crown*, where also a salami was paid in respect of the grant of a mining lease for a period of 999 years. In that case it was held that the salami was a payment on capital account and not income. Sir Dawson Miller, C.J., at p. 84 said :

"There is a vast difference between a sum paid once for all for the lease of mineral rights and a rent or royalty paid annually to the lessor. The lessor in this case who holds an unfettered right of disposal would appear, in granting these leases, to have had two objects in view which are distinguishable. In so far as rent and royalty are reserved, he is founding an annual increment to the income of the Raj for himself and his successors, but with regard to salami it is the price he demands for parting with his direct enjoyment of the property by himself and

his successors for a period of 999 years. He is parting with the capital to persons who, whilst not purchasers of the fee simple, are undoubtedly purchasers of a large interest therein. The purchase price is presumably not based upon the estimated outturn but is paid in exchange for the long term transferred. Possibly it may be objected that the distinction is one of degree rather than of kind, recurring payments at short periods being treated as income and a single payment of a similar kind covering along period being treated as capital, but after all this is a distinction acknowledged in Section 4 of the Act itself, and, as has been observed, the income tax Acts are not cast upon absolutely logical lines. Nor does there appear to be any reason why we should extend the exception made in the case of rent and royalty to the case of a non-recurring payment made to cover a long period.

In so far as the leases in question form transactions by which a lump sum is paid under the name of salami for the granting of the lease I consider that it is more in the nature of an out-and-out sale of property and that the sum so received by the lessor is in no sense income within the meaning of the Indian income tax Act. In so far as the leases reserve rent or royalty, the sums so paid are, in my opinion, income.

In the case of *The Province of Bihar v. Maharaja Pratap Udai Nath Sahi Deo*, there arose a question whether a single non-recurring premium or salami paid to the assessee once only as consideration for the settlement of agricultural land at the time of granting a lease can be held to be income within the meaning of the Bihar Agricultural income tax Act in which the words corresponding to "rent or revenue" in the Assam Act are "rent or income". The learned Chief Justice Sir Trevor Harries was of the opinion at p. 722 as follows :-

"Salami cannot be regarded as income as a matter of law. Salami may in certain cases be regarded a payment of rent in advance, and in such cases the salami could rightly be regarded as income. Where, however, salami cannot be regarded as payment of rent in advance, it cannot be regarded as income and would, therefore, not be taxable."

The learned Chief Justice decided that in that case the salami paid in respect of the grant of an agricultural lease was not income within the meaning of the Bihar Agricultural income tax Act and declined to follow the case of *Birendra Kishore Manikya v. Secretary of State for India* where a Special Bench of this Court decided that salami or premium received on settlement paid for the settlement of waste lands or abandoned holdings was income. In the latter case Sir Ashutosh Mookerjee who delivered the judgment referred to Section 2 (1) (a) of the Indian income tax which defined "agricultural income" as "any rent or revenue derived from land used for agricultural purposes, etc." (the same definition as in the present Act), and referred to the definition of "revenue" set out in the Oxford Dictionary which is as follows :-

"The return, yield, or profit of any land, property, or other important source of

income; that which comes into one as a return from property or possessions, specially of an extensive kind; income from any source, specially of an extensive kind; income from any source but specially when large and not directly earned."

Sir Ashutosh Mookerjee thought that "when a lease was granted, the amount fixed for periodical payment was not independent of the amount paid in a lump sum as premium. The capitalised value of the sum periodically payable, taken along with the premium constituted in the aggregate the consideration for the grant, so that the larger the one element, the smaller the other."

He used that argument to arrive at the conclusion that the premium paid for the settlement of waste lands could reasonably be regarded as "rent or revenue" derived from land within the definition of "agricultural income" in Section 2 (1) (a) of the Indian income tax Act.

The present case is different from the two cases cited in which salami or premia were paid for the grant of mining leases. Those were leases for a long period. They were not granted every day and they involved the right to commit waste, in the legal sense, upon the property. In the present case, however, the leases are for relatively small areas of land for the purposes of cultivation for periods which are not fixed. It would appear from the letter that the holdings so granted are at times abandoned. Therefore they may be let again by the zemindar. When they are let salamis may be charged. The salami is not based upon any idea of damage done to the land. It is estimated to be charged according to the demand that there is for the land. The rent so called is a fixed rent, but the salami varies according to the demand. It is clear that the assessment, namely, Rs. 9,332. In the year before that he received a sum of Rs. 9,527 as receipts from salamis. It would appear that salamis were a normal and regular feature of the zemindars receipts from his estate which comprised a considerable expense of agricultural land.

Under those circumstances, it appears to me that the position is very different from that which obtains under long-term mining leases. In my view having regard to the fact that these salamis occur as a normal and regular, though perhaps variable, feature of the zemindars receipts from his agricultural estate, they are revenue from agricultural land and as such, in my opinion, come within the definition of "agricultural income."

I am of the opinion, therefore, that the item of Rs. 7,934 which was received, on deduction of 15 per cent. for collection, by the assessee as salamis for the grant of letting of waste lands or the re-letting of abandoned holdings is agricultural income within the meaning of the agricultural income tax Act of Assam.

There will be no order as to costs in this case.

GENTLE, J. - I agree and have nothing to add.

Reference answered accordingly.