

(1925) 04 PAT CK 0027

In the Patna High Court

Income Tax Commissioner

APPELLANT

Vs

Shiva Prasad Singh

RESPONDENT

Date of Decision : 27-04-1925

Acts Referred:

Income Tax Act, 1922 — Section 66(1)

Income Tax Act, 1961 — Section 12

Citation : AIR 1926 Patna 109 : 91 Ind. Cas. 476

Hon'ble Judges : Dawson Miller, C.J.;Jwala Prasad, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This matter comes before us on a case stated by the Commissioner of Income Tax u/s 66(1) of the Income Tax Act, 1922. The assessee in the case is the Raja of Jharia who derives a considerable income as the owner of royalties which he receives under mining leases of which he is the lessor, in the Jharia coalfields. The question for our opinion is whether in arriving at the taxable income derived from that source the assessee is entitled to deduct certain cesses or rates imposed upon the owner of such royalties under two local Acts, known as the Jharia Water Supply Act, 1914, and the Bihar and Orissa Mining Settlement Act, 1920. Under the former Act a cess is leviable within the area prescribed both upon the owners of coal mines and upon the holders of royalties from those mines. In the case of mine-owners who are themselves working the mines the cess is a cess on the annual despatches of coal and coke from the mine and would be payable apart altogether from whether any profit is derived from the actual working of the mine. In the case of a person receiving royalties from mines the cess is paid upon the royalties received at a certain rate which is determined by the Board with the approval of the Local Government subject to a maximum of 5 per cent. on the assessed amount of royalty. Under the latter Act of 1920 a somewhat similar rate is imposed u/s 23 both upon the owners of mines and upon persons who receive any royalty, rent or fine from such mines. In this case the assessment is based, in the case of owners of mines, on the actual output of their mines, and here again the assessment in the

case of owners is apart from any profit that may or may not be derived from the working of the mine. In the case of Receivers of any royalty, rent or fine their assessment is calculated on a percentage of road-cess payable by such persons. At present the amount is one-fifth, or 20 per cent, of the average yearly road-cess payable by such persons in respect of their royalties during the last three years.

2. The only question which arises for decision the case is whether under Article 12 of the Indian Income Tax Act these cesses or taxes can be deducted in arriving at the taxable income for the purpose of Income Tax. It was decided in the case of *In the matter of Raja Jyoti Prasad Singh Deo* 60 357 : 6 P.L.J. 62 : 2 P.L.T. 188 : (1921) Pat 81 , that income derived from royalties came within Section 12 of the Income Tax Act which relates to income derived from "other sources" and not u/s 10 which applies to income under the head of "business". The deductions which may be made from the different classes of income mentioned in the Act are stated in detail in the different sections dealing with the different heads of income, and u/s 12 which applies to the present case it is provided that the tax shall be payable by an assessee under the head "other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies if not included under any of the preceding heads. By Clause (2) of the section--and this is the important part of the enactment--such income, profits and gains shall be computed after making 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. Now the only allowances or deductions which are permissible in the case of income derived from "other sources" referred to in Section 12 are those already mentioned in Clause (2) of that section, namely, any expenditure incurred solely for the purpose of making or earning any income, profit or gain. It is contended in this, case that the deductions leviable under the two Bihar and Orissa Acts to which I have referred are expenditure incurred for the purposes of making or earning such income. The case of *In the matter of In Re: K.M. Selected Coal Company of Manbhum*, was relied on in support of this contention. But the reasons for that decision do not apply in this case. There the assessee was the lessee of the mines and the income taxed was profits derived from business. The local taxes as already stated in such a case are levied oh the output or despatches apart from the profits of the business and whether a profit is made or not, and must be taken into account in ascertaining whether there is a profit .which is subject to Income Tax.

3. The present case appears to me to be governed by the principle adopted in the earlier case of *In the matter of Rajs, Jyoti Prasad Singh Deo* 60 357 : 6 P.L.J. 62 : 2 P.L.T. 188 : (1921) Pat 81. In that case "this Court decided that in determining the taxable income derived from royalties, cesses payable under the Cess Acts, that is to say, road-cess and public works cess, cannot be deducted in arriving at the taxable income under the head of royalties and the only question

is whether there is any distinction between the case of a road-cess and the case of the cesses imposed under these two Acts! In that case it was argued as has been argued here, that the taxes should be deducted in order to ascertain what was the actual income. " It was pointed out, however, that the cess was leviable upon exactly the same income as the Income Tax itself and following the case of *Manindra Chandra, Nandi v. Secretary of State for India* 34 C 257 : 5 C.L.J. 148, which held that Income Tax could not be deducted in order to ascertain the amount upon which the road cess was leviable, this Court held that, similarly, you could not deduct the road-cess in order to ascertain the amount upon which the Income Tax was leviable because both taxes were imposed upon the same income; and it was there pointed out that the liability to pay the road-cess resulted from the income having been made, and the payment of the cess could hardly be said to form a necessary part in the earning of the income which must come into existence before the liability to cess arises, and, although the payment of cess was a necessary expense arising in connection with the ownership of royalty, it was nevertheless in no sense an expenditure incurred for any purpose incidental to the making of the income. No argument has been adduced before us in this case which distinguishes the case of the cesses imposed under these Acts from the case of road-cess. It seems to me that in both cases the cess is imposed, upon exactly the same income and the mere fact that Income Tax is also imposed on that income is in itself no reason why the cesses should be deducted in order to ascertain the taxable amount of income any more than it is why the Income Tax should be deducted in order to ascertain the amount of cess. I can see no distinction in principle between, the present case and the case of *In the matter of Raja Jyoti Prasad Singh Deo* 60 357 : 6 P.L. J. 62 : 2 P.L.T. 188 : (1921) Pat 81 and in my opinion the Income Tax Commissioner arrived at a proper conclusion in the case which he stated for our opinion.

Wala Prasad, J.

4. The royalties derived by the owners of lands containing minerals give rise to the following taxes:

(1) Cess levied under the Cess Act (IX of 1880, B. C.) as amended by the Bihar and Orissa Act I of 1916. That cess is a cess on the annual net profits derived from the mines contained within the zemmdari in the shape of royalty,

(2) Cess levied under the Jharia Water-Supply Act (Bihar and Orissa Act III of 1914) on royalties derived from mines, and

(3) A tax under the Bihar and Orissa Mining Settlements (Bihar and Orissa Act IV of 1920) assessed on the local cess payable by the zemindar who owns the lands in which the mine is situated.

5. It is thus clear, that the sources of the three taxes are the same, namely, the amount of royalty received by the zemindar and each of them is to be assessed irrespective of what is paid under the remaining two Acts. Therefore, the payments made with respect to any one of the afore-said taxes cannot be taken

in.to account! in, the1 assessment made for the tax payable under the other Acts. The result is that the taxes payable by the assessee in the presentcase under the Jharia Water-Supply Act as well as the Bihar and Orissa Mining Settlements Act cannot be deducted from" the royalty received by him in assessing,the tax payable under the Income Tax Act of 1922. I, therefore, agree with the order of my Lord the Chief Justice.