
(1951) 03 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 227 of 1949

Kali Pd. Singh

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 02-03-1951

Acts Referred:

Citation : AIR 1951 Patna 151

Hon'ble Judges : Sarjoo Prasad, J; Ramaswami, J

Bench : Division Bench

Advocate : S.K. Majumdar and P.K. Bose, for the Appellant; S.N. Dutt, for the Respondent

Judgement

Sarjoo Prasad, J.—In this Income Tax reference made by the Income Tax Appellate Tribunal the dispute relates to two items, viz., a sum of Rs. 4000 which was paid to the assessee by way of salami by one Dwarka Prasad Agarwala for obtaining a lease & also another sum of Rs. 351 paid by another person, viz., one Amin Ahmed Khan for obtaining settlement of fireclay land from the assessee.

2. The assessee is a zamindar & within the ambit of his zamindari there are tracts of various mineral & mica lands. During the year of accounting i.e. 1943-44, the applicant leased out an area of 3071 acres of land to one Dwarka Prasad Agarwala for the purpose of enabling him to extract mica therefrom. The lease was for a term of 9 years on an annual rental of Rs. 153. It was in connection with this lease that a salami of Rs. 4000 was paid by the said Dwarka Prasad Agarwala for obtaining the lease. The assessee contended that this 4000 rupees was a capital receipt in connection with the transfer of the prospective mineral rights in the land. The claim of the assessee was not entertained by the revenue authorities & the salami of Rs. 4000 was taxed as a revenue receipt & not as capital receipt. In regard to the other sum it has been found that this sum was received by the assessee as salami or premium for settlement of fireclay land measuring about 51.6 acres for a period of 9 years. The two leases, one in favour of Amin Ahmed Khan, are both annexures to the reference made by the

Tribunal & the two points which have been formulated for decision by this Court are :

"(1) Whether on the facts & in the circumstances of this case the Tribunal was right in holding that the sum of Rs. 4000 received from Dwarka Prasad Agarwala was a revenue receipt &, therefore, taxable under the Income Tax Act ? & (2) whether on the facts & circumstances of this case the Tribunal was right in holding that the sum of Rs. 351 received by the applicant for settlement of fireclay land from one Amin Ahmed Khan was a revenue receipt &, therefore, taxable under the Income Tax Act ?"

3. These two points, in my opinion, have to be answered in favour of the assessee in view of a number of judicial decisions upon the point which conclude the matter, the latest of those being the decision of this Court in COMMISSIONER OF INCOME TAX, BIHAR AND ORISSA Vs. RAJA BAHADUR KAMAKSHYA NARAIN SINGH., , corresponding to COMMISSIONER OF INCOME TAX, BIHAR AND ORISSA Vs. RAJA BAHADUR KAMAKSHYA NARAIN SINGH., at page 746. In the case in question the point was whether a sum of Rs. 5,25,000 received as salami by the assessee was taxable as income. In dealing with this point their Lordships relied upon a Special Bench decision of this Court reported in Province of Bihar v. Pratap Udainath Sahi Deo 1941 ITR 313, where it was held that

"salami could not be regarded as income as a matter of law. It may in certain cases be regarded as payment of rent in advance & in such cases it could rightly be regarded as income. Where, however, salami could not be regarded as a payment of rent in advance, it could not be regarded as income & would, therefore, not be taxable. Prima facie, salami is not income & it is for the Income Tax authorities to show that there do exist facts which would make the salami income."

In answering the reference their Lordships pointed out that the question whether salami was or was not assessable as income was largely a question of fact which had to depend upon the investigation of the circumstances of the case; but where the facts found indicate that it could not be regarded as income the inference would be one of law. As already observed above, prima facie, salami was not income unless the Income Tax authorities show that there were circumstances to indicate that it was so. In the present case no such circumstance has been indicated by the revenue authorities. On the contrary, the indentures which are on the record indicate that the salami was not in payment of advance rent. In my opinion, therefore, the two items of salami in the present case could not be assessed as revenue & therefore, had to be excluded from the assessment. For these reasons the questions formulated have to be answered in favour of the assessee and are answered accordingly. The assessee is entitled to his costs of this reference. Hearing fee, in the circumstances of the case, is assessed at Rs. 100 only.

Ramaswami, J.

4. I agree.