

(1942) 04 PAT CK 0013

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 57 of 1941

KAMESHWAR SINGH BAHADUR

APPELLANT

Vs

GOVERNMENT OF BIHAR.

RESPONDENT

Date of Decision : 01-04-1942

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 25(3), 6(c), 7

Citation : (1943) 11 ITR 150

Hon'ble Judges : Harries, C.J; Manohar Lall, J; Fazl Ali, J

Bench : Full Bench

Judgement

HARRIES, C.J. - This is a reference made by the Board of Agricultural Income Tax, Bihar, u/s 25(3), Bihar Agricultural Income Tax Act, in which the opinion of the Court is required upon the following question :-

"Whether the deduction to be allowed u/s 6(c), Bihar Agricultural Income Tax Act, 1938, is to be calculated in the present case on the total amount of rent falling due in the course of the previous year only, or on the total rent falling due for that year together with arrears of rent realisable in respect of earlier years."

For the year of assessment of 1939-40 the Maharajadhiraj of Darbhanga claimed that a sum of Rs. 18,44,676-10-0 should be deducted from his agricultural income in respect of collection charges. The taxing authorities allowed a deduction of Rs. 6,30,057-15-1 and disallowed the remainder. From the order of the Income Tax Officer the assessee appealed but obtained no relief. He eventually asked the Board of Agricultural Income Tax, Bihar to state a case, but the Board refused to do so. On application to this Court this Court by its order dated August 25, 1941, directed the Board to state a case on the question which I have already set out. Permissible deductions from agricultural income are dealt with in Sections 6 and 7, Bihar Agricultural Income Tax Act, and the relevant provision in this case is Section 6 and clause (c) thereof. Section 6 provides that

"the agricultural income mentioned in sub-clause (1) of clause (a) of Section 2

shall be deemed to be the sum revised in the previous year on account of agricultural income mentioned in the said sub-clause (1), after making the following deductions : (c) a sum equal to 12 1/2 per cent. of the total amount of the rent which accrued due in the previous year, in respect of the charges for collecting the same."

Sub-clause (1) of clause (a) of Section 2 deals with rent or income derived from land which is used for agricultural purposes, and clause (a) of Section 6 allows a deduction in respect of collection charges of a sum equal to 12 1/2 per cent. of the total amount of the rent which accrued due in the previous year. In Miscellaneous Judicial No. 99 of 1941 in which a judgment was given to-day, this Court has held that the word "rent" in Section 6, clause (c) does not include interest on arrears of rent. The word means what was actually agreed to be paid for the land between the landlord and the tenant.

The contention of the assessee in this case was that the phrase "the total amount of the rent which accrued due in the previous year" meant not the actual rent that fell due in the previous year but the actual amount of rent which was realisable in the previous year. In other words, the total amount of the rent which accrued due in the previous year meant not only the actual rent which fell due in that year but rent which had fallen due in previous years and which had not been realised but could be realised in the year in question. The Income Tax authorities, however, held that the phrase the total amount of the rent which accrued due in the previous year" meant only the actual rent which fell due in that year-in other words, the jamabandi rent for that year. The question which has to be decided is what is meant by the words "which accrued due in the previous year." If the words "rent which accrued due in the previous year" mean rent which fell due in the previous year, then the Income Tax authorities are right. On behalf of the assessee, however, it has been contended that the word "accrue" connotes growth, and, therefore, "rent which accrued due in the previous year" must mean all rent which was then recoverable, though part of it has actually fallen due in earlier years. In the Shorter Oxford English Dictionary the meaning of the word "accrue" is given as : "Fall as natural growth or increment; to come as an accession or advantage; to arise or spring as a natural growth or result; to grow."

It must be remembered, however, that the word is used in the past tense in Section 6(c). The actual words are : "a sum equal to 12 1/2 per cent. of the total amount of the rent which accrued due in the previous year"; that is BHGE, 12 1/2 per cent. of the rent which has grown due or which has actually become due in the previous year.

Reliance was placed on certain Income Tax cases in which the words "accrues" or "arises" have been considered; but those cases are not applicable because the phrase in Section 6(c) is in the past tense. What is allowed in respect of collection charges is 12 1/2 per cent. of a sum which actually became due in the previous year. It is therefore necessary to consider when rent actually accrues or

becomes due. At Common Law in England rent accrued due when it became payable and at no other time. This is clearly laid down in *Slack v. Sharp*. At page 373, Pattern, J., observed :

"The question is merely when the rent accrued. Rent accrues when it becomes due, and at no other time. If there be no demise, and an action be brought merely for use and occupation, then the compensation due for such actual occupation accrues, like interest, *de die in diem*. But where there is an actual demise, and an express reservation, the rent accrues on the day named in the reservation, and on no other."

In this province rent only accrues on the day on which it becomes payable. Section 53, Bihar Tenancy Act, is in these terms :

"Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments, Falling due on the last day of each quarter of the agricultural year."

The rent therefore accrues due on those dates. There is a similar provision in the Chota Nagpur Tenancy Act. Section 52 of that Act provides :

"Subject to any registered agreement or local custom or usage to the contrary, a money-rent payable by a tenant shall be payable in four equal installments falling due on the last day of each quarter of the agricultural year."

In my view. The only rent which can be said to have accrued due in the previous year is the rent which actually fell due in that year. In that year other rent might be recoverable, such as rent which fell due in previous years and which had not been realized. It would however be straining the language of Section 6(c) to hold that rent which had fallen due in earlier years but was recoverable in the previous year was rent which had accrued due in the previous year. The words "which accrued due in the previous year" can, in my judgment, only mean rent which fell due or became payable in that year.

It is to be observed that if the assessee's contention be well founded he might obtain a deduction for a number of years on the same rent. Assume x rupees had fallen due as rent in the previous year and y rupees was due in respect of earlier years but which remained unrealized. According to the assessee, he would be entitled to 12 1/2 per cent. of x plus y. In the following year let us assume x rupees again became due as rent. If none of the arrears had been realised, the assessee, according to his argument, would for that year be entitled to a deduction not only of 12 1/2 per cent. of x rupees but also of 12 1/2 per cent. on the unrealized arrears of x plus y; that is, a deduction of 12 1/2 per cent. of 2 x plus y. In such a case he would be receiving a deduction in respect of xxy the rupees twice over. In my view, such could never have been the intention of the Legislature.

The scheme of the section appears to me to be clear. The Legislature have adopted a rough and ready method of arriving at a deduction to be made in

respect of collection charges. The deduction is not based on actual rent realized in a particular year, but on the rent which fell due in that year, and it matters not whether such rent has or has not been collected. Each year the assessee is given 12 1/2 per cent. on the jamabandi rent, and that may in some years be a generous deduction, whereas in others it may not be so generous. Where arrears of previous years have been collected, the deduction is not generous, but where there are no arrears and the rent which fell due in the previous year has not been collected in its entirety, the deduction is really a generous one. It is a rough and ready method of arriving at a fair deduction for collection charges, and in my judgment the view of the Income Tax authorities must be maintained. "Rent which accrued due in the previous year" can only mean rent which actually fell due and first became recoverable in that year.

For the reasons which I have given, I would therefore answer the question submitted as follows : The deduction to be allowed u/s 6(c), Bihar Agricultural Income Tax Act, 1938, is to be calculated in the present case on the total amount of rent falling due in the course of the previous year only, and not on the total rent falling due in that year together with arrears of rent realizable in respect of earlier years. The assessee must pay the costs of this proceeding, and I would assess the hearing fee at Rs. 100.

FAZL ALI, J. - I agree.

MANOHAR LALL, J. - I agree.

Reference answered accordingly.