

(1940) 03 CAL CK 0007
In the Calcutta High Court
Case No : Ref. No. 5 of 1940

MANAGER, RADHIKA MOHAN ROY WARDS ESTATE, IN RE.

Date of Decision : 03-03-1940

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153, 3(5), 67

Citation : (1940) 8 ITR 460

Hon'ble Judges : Derbyshire, C.J; Mukherjee, J; Mukherjea, J

Bench : Full Bench

Judgement

DERBYSHIRE, C. J. - In this assessment the assessee was assessed on a certain sum which was interest derived from securities, house properties and other sources. The assessee also had a considerable agricultural income amounting to Rs. 72,600 which, as it was agricultural income, was not included in the assessment. The income tax Officer, however, included in the assessment a sum of Rs. 2,841 as interest on arrear rents collected from agricultural tenants under the provisions of Section 67 of the Bengal Tenancy Act. 1885 which is as follows :

"An arrear of rent shall bear simple interest at the rate of six and a quarter per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit whichever date is earlier."

The simple question is - is the sum of Rs. 2,841, which is interest on rents in arrear collected from agricultural tenants, agricultural income, and so not assessable under the income tax Act ?

The learned Commissioner relied upon the case of Sheik Eusuf v. Jatindra Nath Roy reported in 38 C. W. N. 184 and held that interest on rent derived from agricultural tenants is not rent as defined by the Bengal Tenancy Act. The passage in the report dealing with this is as follows :

"The courts below have agreed in passing a decree in favour of the plaintiff. The effect of which is that interest on rent as claimed in the suit has been made recoverable as rent. In our judgment, interest on rent cannot be held to be rent

as defined by the Bengal Tenancy Act, and the term rent as defined in the said Act does not include interest (see in this connection *Koylas Chandra De v. Tarak Nath Mondal*, ILR Cal 571 Notes)."

This latter case was decided in 1897 and the relevant part of it is in the head note which reads as follows :

"Interest on rent is not rent within the meaning of Section 3, clause (5), of the Bengal Tenancy Act".

Those two decisions were under the Bengal Tenancy Act. We have to consider the matter from the point of view of the income tax Act. Agricultural income as defined in Section 2 (1) (a) is as follows : "any rent or revenue derived from land which is used for agricultural purposes..." (Then follow other words which are not relevant). The question is whether this interest on arrears of rent is rent or revenue within the meaning Section 2 (1) (a) of the income tax Act.

The Oxford Dictionary gives a definition of rent as follows :

"The return or payment made by a tenant to the owner or landlord, at certain specified or customary times, for the use of lands or houses."

Revenue is defined by the same dictionary as

"The return, yield or profits of any lands, property or other important source of income."

"Revenue" would include, in India, any non-periodic payment to the landlord in respect of the use of his lands such as salami. Rent is always associated with land. It is a payment for the use of land. Interest, on the other hand, is associated with money; it is a payment for the use of money.

In this case the rent was payable to the landlord by the tenant by virtue of a contract of tenancy of land. The cause of action in respect of rent arises out of contract. On the other hand the interest which is payable in respect of arrears arises out of a statutory provision of law which imposes a penalty upon the tenant for nonpayment of his rent. Although both rent and interest on arrears of rent are payable by the tenant to the landlord, they are payable for different reasons. Rent is payable for the use of the land under a contract. Interest is payable for the use of money withheld by the tenant and it is payable not by reason of a contract but by reason of a statutory provision. In my opinion, the interest cannot be said to be rent nor can it be said to be a return yield or profit of the lands such as would make it revenue within the meaning of Section 2 (1) (a) of the income tax Act.

For these reasons I am of the opinion that interest on arrears of rent payable u/s 67 of the Bengal Tenancy Act is not agricultural income and therefore is assessable to income tax.

The Commissioner of income tax Bengal, is entitled to his costs of this costs of

this Reference. We assess the hearing-fee at five gold mohurs.

MUKHERJEE, J. - I agree.

The question of law that has been referred to us by the Commissioner of income tax, Bengal u/s 66 (2) of the income tax Act is, as to whether the sum of Rs. 2,841 which was received by the assessee in the present case as interest on arrears of rent under the provisions of Section 67 of the Bengal Tenancy Act was agricultural income within the meaning of Section 2 (1) of the income tax Act.

It is conceded on both sides that the present case, if it comes at all u/s 2 (1), comes under clause (a) of that sub-section and the remaining clauses, therefore are not at all material for our purposes. It is also not disputed that the rents upon which interest was paid by the tenants were due in respect of lands which were used by them for agricultural purposes and which are assessed to revenue in British India. The whole question, therefore, narrows down to this, namely, whether the interest paid by the tenants upon arrears of rent u/s 67 of the Bengal Tenancy Act would be rent or revenue derived from these agricultural lands as contemplated by Section 2 (1) (a) of the income tax Act.

A large number of authorities have been cited to us by the learned Advocates on both sides, but none of them seems to be directly in point. The Commissioner of income tax has laid considerable stress upon a decision of this Court in the case of *Sheik Eusuf v. Jitendra Nath Roy* where it was held that the interest payable on rent either under contract or under statute was not rent as defined in the Bengal Tenancy Act. In that case the defendant tenant had remitted the rents and cases due to the landlord by postal money order and these were accepted by the landlord by postal money order and these were accepted by the landlord. As the payments were not made on the due dates the landlord instituted a suit of recovery of the interest only and obtained a decree in the courts below. This Court held that although the plaintiff could have claimed interest along with rent in a rent suit, he could not sue for interest separately, no matter whether it was recoverable under law or under an agreement and on this view of the case dismissed the suit. The reason given was that rent as defined in the Bengal Tenancy Act did not include interest.

The learned Judges who decided the case relied upon an earlier decision of this Court in the case of *Koylash Chandra De v. Tarak Nath Mandal*, where it was held by *OKinealy and Hill, JJ.*, that to appeal would lie from a decision in a rent suit which only decided a question relating to the rate of interest and not of rent. These decisions, in my opinion, are not in any way conclusive on the present point. It cannot be disputed that for certain purposes an arrear of rent has been held to include interest due upon it u/s 67 of the Bengal Tenancy Act [vide *B. T. Act, Section 161 (c)*] and for the entire arrears including interest the tenure or holding itself may be sold. Then again in computing the mount claimed in a rent suit for purposes of an appeal u/s 153 of the Bengal Tenancy Act, the interest damages claimed by the landlord might be taken into account (vide the

observation of Sir George Rankin in the case of Tarini Charan Bhattacharyya v. Kedar Nath Haldar.)

The question however, which we have to determine in the present case is a different one and it is as to whether the interest that was paid by the tenant upon the arrears of rent could be said to be an income derived by the landlord assessee from agricultural lands.

I think the question must be answered in the negative. Rent is obviously an agricultural income which the landlord makes by reason of his having a proprietary interest in the land which he lets out to the tenant and the tenant pays it as a part of the consideration for the use and occupation of the land which he enjoys. The source of the income is the landlords superior interest in the agricultural land and, consequently, it is an agricultural income. The interest, however, which the tenant pays u/s 67 is a sort of statutory recompense which is allowed to the landlord for being deprived of the use of the money which is payable as rent by the tenant. The landlord does not derive the income by reason of his having parted with any part of his interest in the land, but because of default on the part of the tenant in paying the rent within the fixed period which he could have invested in some profitable manner. The yield is not of the landlords proprietary right in the land but of the debt which comes into existence as soon as there is default on the part of the tenant to pay the rent at the stipulated dates.

I cannot agree with Dr. Basak that Section 67 of the Bengal Tenancy Act really makes the interest a part of the rent. Section 67 in my opinion operates in two ways. In the first place it enables the landlord to recover interest upon arrears of rent after the due date even though there is no stipulation to that effect in the contract. In the second place it operates as a check upon any imprudent contract that might be entered into between the landlord and the tenant on this point and prevents the landlord from realising interest from the tenant in excess of the rate fixed by the statute. Section 67 does not say that the interest payable on arrears of rent would be treated as rent. It is undoubtedly true, as I have already pointed out, that a rent decree which includes both rent proper as well as interest can be enforced by sale of the entire tenure or holding, but here again the test is not whether it could be realised by sale of the land, but whether the income as derived is derived from and has its sources in the land.

For these reasons I agree with my Lord. the Chief Justice, that the question referred to us should be answered in the negative.

Reference answered in the negative.