

(1944) 01 CAL CK 0025
In the Calcutta High Court
Case No : Suits No's. 13 to 22 of 1942

MRS. SUDHA TARANGINI DEBYA AND ANOTHER, IN RE.

Date of Decision : 04-01-1944

Acts Referred:

Citation : (1944) 12 ITR 241

Hon'ble Judges : McNair, J;Gentle, J

Bench : Division Bench

Judgement

McNAIR, J. - We have before us ten references from the Board of Agricultural income tax in Assam in which a simple question has been referred to this Court for its opinion. In Reference No. 15 of 1942 certain preliminary points have been taken on behalf of the assessee. As a matter of convenience we consider that it is unnecessary to deliver separate judgments in each reference by two will consider the various points that have arisen in one judgment which will govern all the references.

In Reference No. 15 of 1942 Raja Prabhat Chandra Barua was assessed by the Agricultural income tax Officer, Gauhati, in respect of the agricultural income tax for the year 1939-40. In computing the total agricultural income of the year certain sums being the equivalent of 15% of the current demand of rent for and of arrear realisations on account of "salami" and "forest" during the year were excluded by the Agricultural income tax Officer on Account of the deduction permissible u/s 7(c) of the Act. An appeal was taken to the Assistant Commissioner, and thereafter the assessee filed u/s 27 of the Act a review petition before the Commissioner of Agricultural income tax, Assam, when he claimed a further deduction of collection charges at 15% of the arrear rent demand. In dealing with the matter the Commissioner of Agricultural income tax, Assam, states in disorder that "the petitioners contention is that if the arrear rents are included for the purpose of computation of total income, he should have also been allowed deduction at the statutory rate of 15% on the whole rent demand of the Estate which includes current and arrear demand during 1938-39." The relevant section of the Assam Agricultural income tax Act, 1939,

for the determination of the total agricultural income from rent or revenue is Section 7, in accordance with which the agricultural income mentioned in sub-clause (1) of clause (a) of Section 2 shall be demand to be the sum realised in the previous agricultural year on account of agricultural income mentioned in the said sub-clause.

Under Section 7(c) a sum equivalent to 15% of the total amount of the rent which accrued due in the previous agricultural year in respect of the charges for collecting the same may be deducted against the total gross income. The Commissioner decided that on the petitioner admitting that 15% allowance for arrear demand will apply only for this year and in future years claims for such deduction will not be made, nor will they be admissible, because for a particular item of rent brought under taxation the collection charges of 15% will be admissible once only. The Commissioner, therefore, allowed the deduction of 15% in respect of the arrear demands for one year, but held that no such deduction would be allowed in future years.

The assessee was assessed in April 1940. The Commissioners order is dated December 5, 1940. On September 3, 1942, the Board of Agricultural income tax, Assam, referred the following question of law for decision to this Court : "Does the phrase accrued due in the previous agricultural year in clause (c) of Section 7 of the Assam Agricultural income tax Act, 1939, include arrear as well as current dues ?" The opinion of the member of the Board was that the answer to the question should be that the phrase "rent which accrued due in the previous agricultural year" refers only to the current demand of rent for that years. His interpretation of the clause is supported by a decision of this Court which is reported in In the matter of Brojendra Kishore Roy Chowdhury. The assessee, Raja Prabhat Chandra Barua died on September 25, 1942, and the first question which has been raised in this particular reference is whether the executors of Raja Prabhat Chandra Barua are properly on the record and whether they are liable to meet the demands on the original assessee.

Section 2 (e) of the Act defines assessee as a person by whom agricultural income tax payable. Section 2(m) defines "person" as "any individual or association of individuals owing or holding property for himself or for any other or others or partly for his own benefit and partly for that of any other or others" in various capacities in clouding that of an executor. An assessee, therefore, tender these definitions may mean an executor by whom agricultural income tax is payable. Section 50 of the Act empowers the Provincial Government to make rules and under sub-clause (k) to prescribe the manner which the tax payable by an assessee who has died since the date of the assessment made on him shall be payable. Rule 24 provides : "Where an assessee dies after assessment has been made his executor, administrator or other legal representative shall be liable to pay out of the assets of the deceased assessee to the extent to which the estate is capable of meeting the charge the agricultural income tax assessed as payable by such person or any tax which would be payable by him under the Act if the

were alive." Clearly the Act contemplates that the executor should step into the shoes of the assessee on his death, and as such he is liable to pay the tax out of the assets of the estate so far as they are capable of meeting the charge.

It was further suggested that the assessee being dead the proceedings had abated and no further action could be taken, and that no machinery existed whereby the executor could be substituted for the assessee in the reference. The same question came before the Patna High Court in *Maharajadhiraja of Dharbhanga v. Commissioner of income tax* where the learned Judges following the decision of Sankeyi, J., in *Smith v. Williams* held that where the proceedings had once commenced they must go forward until adjudicated upon notwithstanding the death of the assessee after the commencement of the proceedings, and that if there were no procedure entitling the legal representatives of the assessee to continue the proceedings the Court would find a convenient form of procedure to meet the case.

In our view there has been no abatement in these proceedings and the executors have stepped into the shoes of the assessee and are liable to the extent of the assets that have come into their hands.

It is then argued that the assessment was made the tax paid and a refund given, and that the assessment must be taken to have been concluded before this reference arose. Section 28 (1) of the Act provides that "if in the course of any assessment under this Act or any proceeding in connection therewith a question of law arises, the Board may, either of its own motion or on reference from any Agricultural income tax Authority subordinate to it, draw up a statement of the case and refer it with its own opinion to the High Court." Sub-section (6) provides : "The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon..... and the Board shall dispose of the case accordingly." Section 28(1) does not appear to place any limit upon the time within which the Boards may of its own motion refer a matter to the High Court.

The only limits are that there should be a question of law which arose in the course of an assessment or in any proceeding in connection with an assessment. Provided those conditions are fulfilled the Board is apparently able under the Act at any time to refer the matter to the High Court and on receiving the opinion of the High Court to dispose of the case accordingly.

It has been point doubt that this power which is given to the Board is very much wider than the power which is given to the assessee, for the assessee is limited to sixty days within which he may apply to the Board to make a reference to the High Court. It has been suggested that if no period of limitation is given within which the Board should refer the matter than it must be taken that the Board must do so within a reasonable time, and it is suggested that the action of the Board has not been taken in this instance within a reasonable time. The argument is that the matter had been decided by the Commissioner, that it had

been accepted, and that refunds had been made, and it was only after the decision of this Court in February 1942 in connection with a reference on the same subject that the Board has thought fit to refer the matter and to reopen the assessments which had been made. It is not for us to put any limitation upon the actions of the Board, which the Legislature itself has not done, and in my view Section 28(1) gives the Board the power at any time to refer a question to the Court and by that means to reopen an assessment provided that a question of law had arisen in the course of an assessment or in any proceedings in connection therewith. There can be no doubt that in the present instance a question of law has arisen, if not in the course of the assessment, at any rate during the proceedings in connection therewith and it appears to me that the reference is competent and the High Court must hear it and must decide the question of law which has been raised.

A further argument was addressed to us on the order of the Commissioner of Agriculture income tax who allowed the arrear demand for one year only having received an admission from the assessee that a claim for such deduction would not be made in future. It cannot be said that there was any bargain between the Commissioner and the assessee. The Commissioner merely stated that there has been this admission by the assessee and he has in fact made the allowance for the one year which the assessee desired. The question with regard to that particular year must depend on the answer to the general question which has been referred to us.

In addition to the case reported in 46 C.W.N., to which I have already referred, there is a judgment of the Full Bench of the Patna High Court in *Maharajadhiraja Sir Kameshwar Singh Bahadur v. The Government of Bihar*. There was no opposition in the Calcutta case, but the matter was considered at some length by the Patna High Court who held that the words "rent which accrued due in the previous agricultural year" in Section 7(c) of the Act must mean rent which actually fell due in that year and first became recoverable in that year. In the course of his judgment the learned Chief Justice Says at p. 515 of the report : "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 realised. It would, however, be straining the language of Section 6(c) (which corresponds to Section 7(c) of the Act with which we are now concerned) 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 become payable in that year." The learned Chief Justice pointed out that any other construction of the section might result in the assessee receiving deduction in respect of the same collection charges on several occasions. He pointed out further that the Legislature appeared to be made in respect of collection charges. Each year the assessee is given a percentage on the rent and that may in some years be a generous deduction whereas in others

it may not be so generous. The question for decision and the reasons for his conclusion appear to me to have been considered in the learned Chief Justices judgment so clearly that no words of mine can express them better.

The answer, therefore, to the question submitted is that the phrase "accrued due in the previous agricultural year" in Section 7(c) of the Assam Agricultural income tax Act of 1939 refers only to the current demand of rent for that year.

The answer to the question referred will be the same in each of the other cases, namely, Number 13, 14, 16, 17, 18, 19, 20, 21 and 22 of 1942.

Although the Board is successful on these references, we consider that owing to the considerable delay in bringing the matter before the Court, there should be no order as to costs.

GENTLE, J. - The Assam Board of Agricultural income tax has referred to this Court then references, Nos. 13 to 22 of 1942 inclusive, u/s 28 (1) of the Assam Agricultural income tax Act of 1939. The assessment in respect of each reference was made in the first year following the Act coming into force.

There is one common question in all the references and, in addition, in References Nos. 15, 18 and 21 of 1942, there are other matter which arise. It is first convenient to deal with the question which is common in all the references. It is as follows :-

Does the phrase "accrued due in the previous agricultural year" in clause (c) of Section 7 of the Assam Agricultural income tax Act, 1939, include arrear as well as current dues ?

The following provisions of the Act are now material :-

Section 2(a) (1) "Agricultural income means any rent or revenue derived from land which is used for agricultural purposes..."

Section 2(d). "Previous agricultural year means the twelve months ending the 31st March preceding the year for which the assessment is to be made...."

Section 7. "The agricultural income mentioned in sub-clause (1) of clause (a) of Section 2 shall be deemed to be the sum realised in the previous agricultural year on account of agricultural income mentioned in the said sub-clause (1), after making the following deductions :-

* * * *

(c) A sum equal to 15 per cent. of the total amount of the rent which accrued due in the previous agricultural year, in respect of the charges for collecting the same."

The realisations in each year may be, and probably are, comprise not only of rent which became payable during that year but also arrears of rent uncollected during previous years. Tax is payable upon the amount of the actual realisations

during the previous agricultural year, but the deduction of 15 per cent. is upon the amount of the rent accrued due during the same period.

In Bouviers Law Lexicon "accrue" is defined as "to become a present right of demand." It must follow that "accrued" in the past tense means became a then present right of demand." In *Slack v. Sharpe, Patterson, J.*, observed at p. 373.

"Rent accrues when it becomes due and at no other time."

If rent is paid after it is due for payment, it does not continue to accrue, although it continues to be payable until it is discharged. The point now under consideration arose in *In the matter of Babu Brojendra Kishore Roy Chowdhury* reported in 46 C.W.N. 492, in which Sir Harold Derbyshire, C.J., and Panckridge, J., expressed the opinion that the phrase accrued due in the previous agricultural year refers only to the current demand of rent for that year and does not include arrears of previous years still due. It was observed in the course of the present argument, that the matter then before the court was not fully argued since learned counsel who appeared on behalf of the assessee conceded that he was unable to contend that the answer which had been given and out of which that reference arose, was incorrect, the answer being the same as the view expressed by the Court.

Maharajadhiraja Sir Kameshwar Singh Bahadur v. The Government of Bihar was a case under the Bihar Agricultural income tax Act, 1938 (Bihar Act VII of 1938), Section 6 of which corresponds so far as is material, with Section 7 of the Assam Act. In the course of his judgment, Harries, C.J., pointed out, at p. 513, that the contention was (as it is in the present case) that the total amount of rent which accrued due in the previous year meant not only the actual rent that fell due in the previous year, but the actual amount of rent which was realisable in the previous year, and at p. 515 the learned Chief Justice observed as follows :-

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 realised. 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 question in the references is completely covered by the above authority with which I respectfully agree. In my opinion the answer to the question should be the phrase "accrued due in the previous agricultural year" in Section 7(c) of the Assam Agricultural income tax Act, 1939, does not include arrears of rent remaining unpaid but relates solely to rent which first became due for payment during the previous agriculture year.

In Reference No. 18 of 1942 the further contention raised is as follows :-

It was the intention of the legislature to give relief with respect to all the expenses for collection of rent the Act came into force in the year 1939 and the

assessment in question is for the first year following the passing of the Act; and unless a deduction of 15 per cent. upon the whole amount due for rent is made, the intention of the Act will not be carried into effect. It was conceded, for the purpose of this contention, that the deduction in any subsequent year would be in respect of the rent accrued for payment during the immediate previous year.

The previous agricultural year, as pointed out above, is defined in Section 2(d) as the twelve months ending the 31st March proceeding the year for which the assessment is made. The act makes no differentiation between the year following the Act coming into force and any subsequent year. The permitted deduction of 15 per cent. is of the total amount of the rent accrued due in the previous agricultural year, which period is clearly defined. If the legislature had intended a special deduction to be made with regard to the first year of assessment after the Act come into force it could easily have so provided, but it has not done so. The language of Section 7(c) is applicable alike to all assessments. The legislature had omitted to make any special provision with regard to do the first year of assessment and it is not within the province of this Court to repair the omission. In my view there is no distinction to be drawn between the assessment in the year immediately following the Act coming into force and an assessment in any subsequent year, and that the first years assessment is not subject to any special deduction in respect of collection expenses.

In Reference No. 15 of 1942 there were two additional contentions raised : the relevant facts giving raise to them are as follows :-

The original assessee was Raja Prabhat Chandra Barua. In the assessment for year in question the deductions allowed was in respect of rent which actually become payable. By his order dated the 5th December 1940, the Commissioner of Agricultural income tax held that the original assessee was entitled to a deduction of 15 per cent. of the total amount of rent, both current and arrear, due in the previous agricultural year. In consequence of the Commissioners decision the assessee was allowed a deduction of 15 per cent. upon the whole amount of rent unpaid, irrespective of when it become due, and a refund was made to him of the excess tax which he had paid by the reason of the assessment having included an allowance only in respect of rent becoming payable in the year previous to the assessment. On the 3rd September 1942, the present reference to this Court was made by the Assam Board of Agricultural income tax and the assessee died on the 28th September following. His executors have now been substituted in his place. It was contended that :

- (1) the present reference cannot be continued against the executors, and
- (2) it is not a reference in the course of an assessment as contemplated by Section 28(1) of the Act under which the reference is made.

As to (1) : The material provision of the definition section of the Act are :-

Section 2(e) : "Assessee means a person by whom agricultural income tax is

payable," and

Section 2(m) : "Person means any individual or association of individuals owning or holding property for himself or for any other or others as owner or executor."

Upon the death of a testator his executor, in effect, steps into his shoes and, to the extent of the assets of the estate in his hands, liable in the same way as was the testator in his lifetime. Proceedings pending at the death of an assessee are not thereby ended but can be continued by the executor being substituted in his place. This contention, in my view, is covered by the decision in *Maharajadhiraja Bahadur of Dharbhanga v. Commissioner of income tax, Bihar and Orissa*, particularly the observations of Das, J., at pp. 270 and 271, who followed the decision of Sankey, J., as he then was, in *Smith v. Williams*, the substance of the decision being that, upon the death of an assessee during the tendency of proceedings relative to tax the executors can continue them, or they can be continued against the executors, in place of the assessee. Section 2, clauses (e) and (m), make it clear that the executors are assessee within the meaning of the Act.

As to (2) : Section 27, sub-section (1), of the Act enables the Commissioner of Agricultural income tax of his motion or on petition to call for the records of any proceeding under the Act; by sub-section (2) he may pass such orders as he thinks fit; and by sub-section (3) any order passed by the Commissioner shall be final subject to any reference that may be made to the High Court u/s 28. On the 5th December 1940, the Commissioner passed an order pursuant to Section 27(2).

Section 28(1) provides as follows :-

"If, in the course of any assessment under this Act or any proceedings in connection therewith other than a proceeding under Chapter VII, a question of law arises, the Board may, either of its own motion or on reference from any Agricultural income tax authority subordinate to it, draw up a statement of the case, and refer it with its own opinion to the High Court."

Sub-section (2) enables an assessee to require the Board to refer to the High Court any question of law arising out of any order or decision of the Commissioner, which is prejudicial to him, but the application for this to be done must be made within sixty days of the date upon which the order was served upon him.

The present reference was made by the Board to this Court pursuant to Section 28(1) in respect of the Commissioners order dated 5th December 1940 which he passed under sub-section (2). It is subject to the provision in sub-section (3).

Whilst sub-section (2) places a time limit of sixty days within which the assessee can take steps to obtain a case to be stated. There is no period specified in sub-section (1) during which the Board can refer a case to the High Court. The only limitation placed upon the Board is that a point of law must arise either in the

course of any assessment or in any proceeding in connection therewith. The full provision of sub-section (1), in its commencement, is : "If in the course of any assessment under this Act or in the course of any proceeding in connection with the assessment." The matter before the Commissioner was a proceeding in connection with an assessment under the Act, and during this proceeding a question of law arose with regard to the meaning of the phrase, which is the question in this reference. The Board has power to refer a case to the High Court when a question of law arise either in the course of an assessment or in the course of any proceeding in connection with it and since a question of law, the subject of the present reference, arose in the course of a proceeding in connection with an assessment, the Board is empowered u/s 28(1) to make the present reference. When a point of law arises in the course of a proceeding in connection with the assessment, there is no need for a question of law to have arisen in the course of an assessment. These two provisions are alternative and compliance with one or other is sufficient to enable the Board to make a reference.

The present reference was made after the laps of nearly two years following the order and decision by the Commissioner. It was suggested in argument, that since no time is specified in Section 28(1) under which the Board can refer a case, such step should be taken within a reasonable time, and a reasonable time had expired by the 3rd September 1942 when the present reference was made. There is no provision in Section 28(1) for a reference to be made within a specified period or within a reasonable time and on the wording of the sub-section it is open to the Board to refer a case at any time, provided that a question of law arises. It does seem incongruous that, whilst the assessee is limited to a period of sixty days during which he must take the initiative to obtain a case being stated for the opinion of the High Court, the Board is unfettered in point of time. By Section 30, agricultural income chargeable to agricultural income tax has escaped assessment for any financial year, the income tax Officer may take the steps specified in the section in order to obtain an assessment upon the income which has escaped. But the time during which the income tax Officer can act u/s 30 is written three years of the end of financial year in question. This section can be utilized in the event of an intentional suppression of income by an assessee. Nevertheless the liability of such an assessee is limited by the income tax Officer having to take steps u/s 30 within three years. In the present reference there is no question of the assessee suppressing income from the Agricultural income tax authorities, but u/s 28(1) the Board could have referred the matter to this Court even after three years had expired. The wording of Section 28(1) is similar to that in Section 66 of the Indian income tax Act, before it was amended in 1939. The period of sixty days, during which the assessee was always required to take steps u/s 66 is now, by the amendment, the period during which the Commissioner under the income tax Act must proceed to obtain the opinion of the High Court. It would be in consonance with equity, if the Assam Act was brought into line with the amendment in the income tax Act.

One further question arises which was argued in Reference No. 21 of 1942. It was suggested that a reference can be made by the Board u/s 28(1) only during the course of pending proceedings before the Commissioner of Agricultural income tax and that after an order has been passed by that officer there is no right in the Board to make a reference. This contention has neither support nor authority in the Act, and Section 27(3) makes it quite clear that a reference can be made after the Commissioner has passed an order since it provides that his order shall be final subject to any reference made to the High Court u/s 28.

In Reference No. 18 of 1942 Dr. Basak, learned Advocate on behalf of the assessee, desired to raise a further contention that the method of ascertainment of the amount of the assessment was incorrect inasmuch as no allowance had been given in respect of the losses incurred in the Bijni Duars estate against the profit from the Bijni Estate. The objection by the learned Advocate General on behalf of the Board that this matter did not arise in the reference having prevailed, it was not further pursued.

Reference answered accordingly.