

(1951) 03 PAT CK 0025

In the Patna High Court

Case No : Misc. Judicial Case No. 149 of 1949

P.C. Lal Chaudhury

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-03-1951

Acts Referred:

Bihar Agricultural Income Tax Act, 1948 — Section 28(3), 6K
Contract Act, 1872 — Section 60, 61

Citation : AIR 1952 Patna 453 : (1952) 21 ITR 573

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

Bench : Division Bench

Advocate : S.K. Majumdar, for the Appellant; Govt. Pleader and R. Prasad, for the Respondent

Judgement

Ramaswami, J.—Pursuant to an order of the High Court dated 8th August 1949 the Board of Revenue has made this reference u/s 28(3) of the Bihar Agricultural Income Tax Act.

2. The material facts are that for the year 1946-47 the assessee Raja P. C. La"1 Chaudhry claimed a deduction of Rs. 63,500 paid on 24th July 1946 towards his mortgage debt due to Ku-mar P. N. Ray of Calcutta. It was alleged by the assessee that the amount was paid towards interest on the mortgage debt. It appears that on a subsequent date there was a compromise decree prepared in the High Court of Calcutta, according to which the decretal amount was fixed at Rs. 10,50,227. The Agricultural Income Tax department did not concede the whole claim of the assessee but calculated the tax on the ground that half the amount, viz., Rs. 31,750 should be deducted on account of payment towards interest.

An appeal was preferred by the assessee before the Commissioner of Bhagalpore Division who dismissed the appeal & upheld the order of the Assistant Commissioner on the ground that there was no specific apportionment of the payment towards interest either by the creditor or by the debtor and there was

no mention in the compromise decree that this amount had been appropriated towards interest. Against the order of the Commissioner the assessee moved the Board of Revenue who held that the matter called for further enquiry but since there was negligence on the part of the assessee to produce the relevant books of account, further enquiry would be made only if the assessee made payment of Rs. 200 towards the cost of the department.

3. At the instance of the assessee the High Court had ordered the Board of Revenue to make statement of the case upon the following question of law , viz., "whether the Board was justified in law in ordering a remand for further findings in the circumstances?"

4. Upon the facts of this case it is plain that the Board of Revenue was not justified in ordering a further enquiry for deciding the question whether there was any appropriation made towards principal or interest in the books of the creditor or in the books of the assessee.

5. On behalf of the assessee, Mr. Majumdar pointed out that before the Agricultural Income tax Officer the assessee did produce his books of account through his agent Mr. J. N. Das Gupta. These books of account appear to have been accepted as genuine by the Agricultural Income Tax Officer who computed the income of the assessee on the basis of the entries therein. Learned counsel also pointed out that the estate was in charge of a receiver in the year 1353 Fs. for which period the assessment in question has been made. The Commissioner in disposing of the appeal also reached the findings; (a) that there was no specific apportionment of the payment towards interest by the debtor; (b) there was no apportionment by the creditor of the payment towards interest and "(c) the High Court of Calcutta did not treat it specifically as payment towards interest but reduction of the total debt was made up of equal moities of interest and principal.

Upon these findings, it is difficult to see how there is any justification for the order of remand made by the Board of Revenue in this case. In my opinion, the assessee had produced his account books for the period in question and there was no negligence on his part in the production of relevant evidence. It is important to notice that the assessee did produce the receipt granted by the creditor which did not mention as to how the amount was appropriated but it wrongly stated that the payment was made in part payment of "decretal amount" though there was no decree in existence on that date. It is manifest that the Board was not justified in ordering a remand for further findings in the circumstances of the case & the question referred to the High Court must be answered in the negative.

6. On behalf of the State of Bihar, it was objected by the learned Government Pleader that the reference was not competent since the order of the Board of Revenue was not prejudicial to the assessee. In my opinion, this argument is wholly untenable; for upon the facts proved the assessee was legally entitled to

reduction for the entire sum of Rs. 63,500 paid towards the mortgage debt as interest under, Section 6K of the Bihar Agricultural Income Tax Act. It is of importance to remember that the Commissioner definitely reached the finding that there was no evidence to show that the assessee or his creditor had treated the whole of this amount as payment towards interest and there, was no specific mention in the compromise decree of the High Court that this payment should be set off against principal or interest.

Upon these findings of fact the presumption of law would apply that the payment is attributed in the first instance towards the outstanding interest. The principle is that where money is received without a definite appropriation on the one side or on the other, the money ought first to be applied in payment of interest and then when that is satisfied, in payment of the capital. The principle stated by Ribgy L. J, in the case of "PARR'S BANKING CO. v. YATES", (1898) 2 Q.B. 460 at p. 466, is as follows :

"The defendant's counsel relied on the old rule that does, no doubt, apply to many cases namely that where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract."

The rule was applied by the Judicial Committee in "COMMR. OF INCOME TAX, BIHAR AND ORISSA v. MAHARAJADHIRAJ OF DARBHANGA", 12 Pat 318 in which the assessee had received a sum on account of principal and interest due, without an appropriation between them by the debtor, and the Income Tax Officer, had appropriated the sum first to outstanding interest, although the assessee in his accounts had not credited any receipt of interest. In pronouncing the opinion of the Judicial Committee, Lord Macmillan referred to "VENKA-TADRI APPA RAO v. RAJA PARTHASA-RATHY APPA RAO", 48 Ind App 150 (PC) and states that the presumption was no doubt operative primarily in question between debtor and creditor, but the Income Tax Officer was entitled in the circumstances of the case to treat the sum in question as applicable to the outstanding interest and accordingly to treat the payment to that extent as income of the assessee in the year of payment. In my opinion, the present case falls within the principle established by these authorities and it ought to be held that the assessee is entitled to a deduction of the entire sum of Rs. 63,500 u/s 6K of the Bihar Agricultural Income Tax Act. It follows therefore that the Board of Revenue in ordering a remand had passed an order prejudicial to the assessee and the present reference made by the petitioner in pursuance of the order of the High Court is competent.

7. For these reasons I hold that the Board of Revenue was not justified in law in ordering a remand for further findings in the circumstances of the case and I would answer the question referred in the negative. The assessee is entitled to the cost of this reference. Hearing fee Rs. 250/-. He is also entitled to a refund of

the amount in deposit with the Board of Revenue for obtaining the reference.

Sarjoo Prosad, J.

8. I agree.