(1942) 04 PAT CK 0016

In the Patna High Court

PROVINCE APPELLANT

Vs

RAHA BAHANDUR HARIHAR PRASAD NARAIN SINGH. RESPONDENT

Date of Decision : 01-04-1942

Acts Referred:
Income Tax Act, 1961 — Section 2, 24, 6, 7

Citation : AIR 1942 Patna 276 : (1942) 10 ITR 391

Hon'ble Judges : Harries, C.J;Mohonar Lal, J;Fazl Ali, J

Bench : Full Bench

Judgement

MOHONAR LAL, J.-This is case stated by the Bihar Board of Agricultural Income Tax u/s 25 (2) of the Bhiar Agricultural Income Tax Act (Act VII of 1938) for the opinion of this Court upon the following questions formulated at p. 13 :

" (a) Whether Section 6(a) warrants splitting up of the assessees agricultural estate into groups and limiting the deductions to the actual income from each group.

(b) Whether the assessee is entitled to claim deduction of the payments made by him u/s 6 (a) and (b) as against his total agricultural income from his entire estate.

(c) Whether the entire amount of Government revenue, ceases and malikana paid by the assessee in 1345 Fasli could be deducted u/s 6(2) and (b) of the Act."

The assessee returned his assessable income under the Bihar Agricultural Income Tax Act, hereinafter to be referred to as the Act, for the year 1345 Fasli at Rs. 27,802-15-3 after claiming certain deductions, but the Agricultural Income Tax Officer by his order darted 31st August 1939 raised the assessable income to Rs. 99,374-15-0. He refused to allow the principal deductions claimed by the assessee in the following circumstances.

The Maharajadhiraja of Dharbhanga who had obtained a simple mortgage decree against Maharaj Kumar Gopal Saran Narain Singh of Tekari on 3rd February

1923, for a sum of Rs. 31,54,936, assigned his tights under it to the assessee on 15th June 1931 for the same amount. The latter paid a sum of Rs. 1,04,936 in case and for the balance, Rs. 30,50,000, he executed a zarpeshgi of his villages on the same date in favour of the Maharajadhiraj with the stipulation that this amount would be wiped off by the Maharajadhiraj enjoying for a period of 17 year the usufruct of the villages given in zarpeshgi. Under the terms of that deed, the assessee was required to pay for these villages the entire Governments demand of revenue and cess. The Maharajadhiraj had too pay Rs. 10,000 as haq hajri or rent reserved under the zarpeihgi. Thereafter another transaction was entered into between the Maharajadhiraj of Darbhanga and Rani Bhubneswari Kuer of Tekari by which the Maharajadhiraj sublet his zarpeshgi right to the Rani and took from her on sadhaua mortgage her one properties carrying an income of Rs. 3,00,000 per annum. As a result of this transaction, the properties given in zarpeshgi to the Maharajadhiraj are now in possession of the Rani who pays to Rs. 10,000 annually to the assessee being the amount which was payable originally by the Maharajadhiraj under the transaction of 15th June 1031. The assessee included in his return for 1345 Fasli the sum of Rs. 10,1129-1-7-being the zarpeshgi rent which he received from the Rani. He however claimed deduction for the entire Government revenue and cess which he paid to the Government for all his villages including the zarpeshgi villages which yield to him agricultural income. The agricultural Income Tax Officer disallowed the deductions of Rs. 48,27-10-11 as Government revenue and Rs. 23,544-0-10 as cess which the assessee admittedly paid to the Government in the previous year upon the ground that "in view of the fact that the villages in question are to in his possession and that he is not deriving any agricultural income from them he is not entitled to get any deduction on account of revenue and cess u/s 6".

Against this order the assessee appealed to the Commissioner of Agricultural Income Tax who held that the assessee was deriving agricultural income from these villages given in zapreshgi but allowed his claim only to this extent that the limit of deduction regard to land revenue, cass and malikana should not exceed Rs. 10,129-1-7 because that was the only income which the assessee was deriving from the Darbhanga zarpeshgi properties. The Commissioner gives the analysis of the land revenue and cess paid by the assessee under the heads, (a) for entire tauzis zarpeshgeed to D, (b) for entire tauzis outside the D Zarpeshgi, (c) for tauzi containing a mixture of villages in D zarpeshgi and also villages excluded from D zarpeshgi-the letter D apparently stands for Darbhanga.

The assessee then moved the Bihar Boar of Agricultural Income Tax, but the board by an order dated 18th May 1940 although it felt that the questions to whether full deduction as claimed should be allowed to the assessee was not free from difficulty, did not see any other alternative except to follow the views of the Commissioner. It gave the assessee some relief by directing that an inquiry should be held as to whether any part of the amount paid by the assessee as Government revenue or cess or malikana was actually paid by the assessee in respect of the properties which were not covered by the zarpeshgi lease. On the petition of the assessee the Bihar Board of Agricultural Income Tax has made a reference to this Court by its order dated 21st August 1940 seeking the opinion of this Court on the question stated in the beginning of the judgment.

It is clear from the facts stated above that the assessee is deriving agricultural income from the villages which belong to him and are not in his possession as they were made over by him to Maharajadhiraj of Darbhanga on the basis of the zarpeshgi of June 1931 and which the Maharajadhiraj in his turn made over to the Rani upon certain terms. The assessee also had paid Government revenue, cess and malikana for these villages. In these circumstances I do not see any justification for the view that the assessee cannot claim deduction for the sums admittedly paid by him on these heads.

But it is argued by the learned Advocate-General, who appears for the Agricultural Income Tax Department, that the assessee is not entitled to this deduction because in arriving at the total agricultural income in income from the zarpeshgi villages is to be ascertained after making the admissible deductions and if there is a deficit or loss by reason of the fact that the admissible deductions exceed the gross agricultural income actually realised in the previous year then the assessees income from these villages should be treated as nil and he should not be allowed to set off the other lands. He relies upon the wording of Section 6 of the Act which in his submission means - to take for instance sub-clause (a) -that the assessee is entitled to deduction of the sum actually paid in the previous year as revenue to the Crown or as rent to the landlord "in respect of the land from which such agricultural income is derived." He argues that we must consider each portion of the land from which agricultural income is derived and allow a deduction of only those sums (or portions thereof) actually paid as Government revenue or rent to the landlord in respect of this and provided these payments do not exceed the gross sum realised as income therefrom.

I do not agree with this argument. The Act does not profess to tax each village or each parcel of lane that yields agricultural income bur seeks to assess the total agricultural income of the assessee where it exceeds Rs. 5,000 (see Section 3 and 5). The argument proceeds upon the assumption that there are different incomes which are being assessed, that is the income from each property or each unit or each transaction, and further that there are two different kinds of income which are being assessed, the one u/s 6 and other u/s 7. The fallacy underlying this argument was exposed long ago by the House of Lords in Attorney-General v. London County Council (1901) 4 Tax Cas. 265. This case was approved by the House of Lords in the later case in Salisbury House Estate, Ltd. V. Fry (1930) 15 Tax Cas. 266 It would be useful to quote the following passages from the speech of Viscount Dunedin at p. 306 : "Now, the cardinal consideration in my judgment is that the Income Tax is only one tax, on the income of the person whom it is sought to assess, and that the different Schedules are the modes in which the statute direct this to be levied. In other words, there are not five taxes which you might call Income Tax A, B, C, D, and E, but only one tax.

That is to be levied on the income of the individual whom it is proposed to assess, but then you have to consider the nature, the constituent parts, of his income to see which schedule you are to apply" and ar p. 308 while considering the argument advanced on behalf of the assessee and on behalf of the Crown the matter is put thus : "Now, the cardinal position is that Income Tax is one tax, and the schedules merely the different means of collecting it, and that there are not so many taxes as there are schedules. This point was raised in the most distinct manner in Attorney-General v. London County (1901) A. C. 26 I quote from the argument of the taxpayer : There is no ground for the distinction made by the Court of Appeal between Schedule A and Schedule D. There is only one tax, and the schedules constitute not separate imposts but one tax under several head heads. And now I quote from the language of the counsel for the Crown : It is not correct to say that there is one tax only, the Income Tax. The Act of 1842 speaks in the preamble of the several rates and duties mentioned in the several schedules contained in this Act and marked respectively A, B, C, D, and E. The separation is maintained throughout the Act......... There are thus five different taxes. This view of the case head been unheld by the Court of Appeal, but it was rejected by this House. Lord Macnaghten, who delivered the leading judgment, says among other thins. I - income tax-is one tax, not a collection of taxes essentially distinct...... In every case the tax is a tax on income, whatever may be standard by which the income is measured...... the expression profits or gains..... is constantly applied without distinction to the subject of charge under all the schedules. And then, commencing on the Court of Appeals judgment he quotes from it : The tax under Schedules D is a tax upon profits and gain, an entirely different tax from the tax under Schedule A;, on which he says, with all deference, I do not think that is sound view of the Income Tax Act. The other members of your Lordships House agreed with him."

In order to show that the contention is extravagant, it would be enough if a simple illustration is taken. Let us assume that the total agricultural income of an assessee is of such a character that it comes u/s 6 only. If such an assessee is asked as to what is his total agricultural income he would add up the gross receipts of rent or revenue realised by him from all his villages and he will deduct from it the expenditure for collecting this income and Government revenue and other public demands that he has to pay for these villages. It would be this difference which he will describe as his total agricultural would be this difference which he will describe as his total agricultural income. He will never describe in ordinary parlance that his income is derived only from that village in which his receipts exceed the expenditure and the public demands unless he is asked what is his agricultural income from a particular village. Lord Romer in delivering the judgment of their Lordships of the the Judicial Committee in a case reported in Commissioner of Income Tax, Bombay Presidency, Sind and Baluchistan v. Ahmedabad Advance Mills, Ltd., considered in the same way the contention of the Income Tax Department that the income ought to be considered as brought into British India where the income had been spent in England in purchasing commodities which were sent out to British India. Their Lordships thought that this contentions was extravagant. In order to show how extravagant it was they took an illustration and observed at p. 120 thus : "A resident in British India when on a visit to this country receives here the sum of 500 sterling as interest on British Government Stock. He expends it here in replenishing his ward or be and in purchasing a motor-car. At the end of two years he returns to British India, taking with him the garments and the motor-car. The garments have been born for two years, and the car in that time may have been driven 40,000 miles or more. Yet, if the appellant is right, the person in question will on his return to India, be deemed to have brought back with him the 500 interest that he received in this country. The truth of the matter is that in such a case he does not bring back into India a penny of the 500. he had spent it all in England. If upon his return to India the question were put to him.How much have you left to the 500? his answer would be none, and the answer would be a true one whether addressed to a casual inquire or to the Income Tax Officer. What he has taken back to India are some much born clothes and a car much depreciated in value. But these things can into sense be described as income; and it is only income that can be taxed under the Income Tax Act."

It was also argued that the total agricultural income is defined by Section 2(q) to mean the aggregate of the amounts of agricultural income of the different classes specified in Section 6 and 7 as determined respectively in the manner laid down in the said sections. Section 7, it should be observed, deals with the class of agricultural income which is derived by agriculture, or by the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator to raise the produce, or the sale by a cultivator or a receiver of rent-in-kind of the produce raised or received by him-that is to say, deals with agricultural income derived by the actual cultivator or receiver of rent-in-kind. It was therefore, submitted that the agricultural income which come u/s 6 should first be calculated by making a proper deduction and then the agricultural income which comes u/s 7 should be calculated by making a proper deduction and the two figures thus arrived a t should be added together in order to find the aggregate of the total agricultural income. But this argument, as I have stated already, is based upon the assumption that the agricultural income on these heads is of two different kinds. The Act has, for the sake of convenience, used two different section is order to indicate clearly as to what deduction should be allowed from a purely zamindary income like rent and what deductions should be allowed when the income is not received in cash but in kind. It was necessary to do so because some assessee may have only agricultural income to which Section 7 would apply whereas the other assessees derive the kind of agricultural income which is contemplated by Section 6. But the two sections must be read together. This also clear form the proviso to Section 7(3) and (g) where it is provided that no deduction shall be made under these classes if it has already been made u/s 7. This shows, as was to be expected, that the agricultural income of an assessee is to be considered as a whole and proper deduction must be given from each class of provided by Section 6 and 7 as the case may be, provided that the deductions are not made twice over.

It is true that there is no sub-section like Section 24(1) the Income Tax Act which allows the assessee a set-off against his income, profits or gains the loss which he sustains under any head mentioned in Sec. 6 of the Income Tax Act but this was considered unnecessary because the Act seeks to assess only one head of income, namely the income from agriculture. It has never been suggested in the ordinary Income Tax cases that an assessee is not allowed to set off his loss or expenditure which he sustains or has incurred under different items of a single head. For instance, where an assessee is carrying on a money-lending business only he is always allowed to deduct the total expenditure which he incurs in that business although it may be in connection with a large number of debtors and he is also entitled to write off all the bad debts which became bad in the course of the previous year. It had never been suggested that in order to find out the money-lending income of such an assessee you must see each individual transaction and find out how much expenditure he has incurred for each money-lending transaction and allow him the expenditure only to the extent to which he has made a profit or to the extent to which interest accrues to him form each money-lending transaction. Again, take the case of house property., Here the total rental from all the houses, or their annual value as the case may be, is calculated and proper deduction is allowed to the assessee as is permissible under the Income Tax Act. The property is never split up into units in order to find out whether each property has brought in an income and if the expenditure exceeds that income the expenditure allowed is never limited to the extent of the income derived from each item.

I am, therefore, of the opinion that when an assessee is being taxed on his total agricultural income, calculating should be made by adding up his gross receipts from all the villages and by deducting form it the total expenditure which is allowed to him by Section 6-the difference will be his total agricultural income which will be assessable if it exceeds Rs,. 5,000, If the income of the assessee is also derived from land which is in his actual cultivation or which is let out by him or produce rent, the income which he gets, is still agricultural income though in such a case the Act provides Section 7 a mode a calculating the income and also provides for similar deductions as in a case filling u/s 6 provides the deductions are not allowed twice over. But the gross incomes must be added up and also the proper deductions as stated above.

For these reason I am satisfied that the contention of the assessee is correct, that he is entitled to a deduction u/s 6 (a) and (b) of the total amount of Government revenue and cess which he pays for all the properties from which his total agricultural income is derived and that such deductions cannot be limited to the amount which he actually receives as income. The answer to question (a) is in the negative. The answers to questions (b) (c) are in the affirmative. The assesses is entitled to costs of this reference. I would assess the hearing fee at Rs. 250.

HARRIES, C. J.-I agree.

FAZL ALI, J. - I agree.

Reference answered accordingly.

