(1944) 03 PAT CK 0003

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 37 of 1942

PROVINCE OF BIHAR APPELLANT

Vs

DALIP NARAIN SINGH. RESPONDENT

Date of Decision : 06-03-1944

Acts Referred:
Income Tax Act, 1961 — Section 2

Citation : AIR 1944 Patna 353 : (1945) 13 ITR 37

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

Bench : Full Bench

Judgement

MANOHAR LALL, J. - This is a reference u/s 25 (2) of the Bihar Agricultural Income Tax Act, 1938, for the opinion of the Court on the following questions : (1) Whether the assessee should not be allowed deduction from the assessable income a sum of Rs. 10,000 claimed by him as interest on arrears of rent on which tax has already been recovered by the Central Income Tax Department. (2) Whether the assessee should not also be allowed deduction at 12 1/2 per cent. collection charges on the total amount of cess collected by him u/s 6 (c) of the Bihar Agricultural Income Tax Act; and (3) Whether the Agricultural Income Tax Officer was right in allowing the assessee only a proportionate deduction on account of the municipal tax payable for his residential house, a part of which is used along with his co-sharers as zamindari sherista, although the full amount of the tax is paid by the assessee.

Question 1. - The first question will be answered in accordance with the answer given by this Court in Lakshmi Daiji v. Commissioner of Income Tax, Bihar and Orissa, decided on the 15th February 1944, in which we held that interest on arrears of rent is part of the assessees agricultural income within the meaning of Section 2(1)(a) of the Income Tax Act, and, therefore, exempt from taxation under the Income Tax Act. It follows that the sum of Rs. 10,000 must be included under the agricultural income of the assessee assessable to agricultural Income Tax. If the tax has been recovered by the Central Income Tax

Department on this sum, the remedy of the assessee is to apply for relief elsewhere. No deduction can be given to the assessee in these proceedings.

Question 2. - The assessee claim that he should be allowed deduction of 12 1/2 per cent. of the amount of cess which accrued to him during the previous year as collection charges. By Section 6, sub-clause (c), of the Bihar Agricultural Income Tax, Act the deduction permitted is 12 1/2 per cent. of the total amount of the rent which accrued due in the previous year. The assessee contends that cess in included in the term rent and drawn attention to a number of authorities and various provisions in the Tenancy Act, where it has been held that the definition of rent in the Tenancy Acts includes road cess. In my opinion the contention is fallacious because the question is not whether cess is recoverable or recovered as rent within the meaning of the Tenancy Acts but whether the word rent used in Section 6 (c) also includes cess.

In A. B. Cheoditti v. Quadress, Mullick, J., held that it was clear from the definition of rent in the Bengal tenancy Act that rent includes road cess, and therefore u/s 65 a decree for road cess is a first charge upon the tenure, and he referred with approval to the case in Nobin Chand Naskar v. Bansinath. This case was upheld in Letters Patent by Sir Dawson, Miller. C.J., and Coutts, J., and was referred with approval by Jwala Prasad, J., who delivered the Judgment in the Letters Patent case in Sourendra Mohan Singh v. Kunjbihari Lal.

In Bhagawan Das v. Bhupendra Narain Singha, Mukerjee, J., held that the definition of rent in Section 3 (5) of the Bengal Tenancy Act was sufficiently wide to include cesses which are payable by the tenant to the landlord as a consideration for the use and occupation of the lands of tenancy.

In Rajani Kant nag v. Jogeshwar Singh it was contended that because the definition of rent in the Rent Act also includes cesses for certain purposes suits for cesses should not be treated as suits for rent, and that a second appeal would lie irrespective of Section 153 of the Bengal Tenancy Act. But the learned Judges decided that even though the various sections in the Tenancy Acts declare that rent includes cess yet "these are enabling provisions passed to extend the meaning of rent, and it in no way interferes with the law refusing a right of appeal in suits below one hundred rupees in value."

These decisions do not help the assessee at all because the deduction of 12 1/2 per cent. is only allowable to him under the Act on the total amount of rent which accrued due to him in the previous year and not in addition on the total amount of cess which accrued due to him in that periods even though this was recoverable as if it were arrears of rent under the provisions of the Tenancy Act. Attention may be drawn to Section 6 (b) where the Legislature has distinctly allowed another deduction to the assessee for the sum actually paid in the previous year in respect of the local cess; the Legislature was thus aware that a deduction was being allowed to the assessee on account of the cess which he pays, and if it was intended that a deduction should be given to the assessee for a certain sum in respect of collection the road cess which accrues due to him, it would have been clearly provided in Section 6 (c).

I am, therefore, of the opinion that the answer to this question is in the negative.

Question 3. - This question appears to be a question of fact and when it was pointed out to Mr. S. N. Dutt, who appeared for the assessee, a proportionate sum of municipal tax has been allowed as deduction by the agricultural income tax authorities, as stated in para 7 of the petition of the assessee, he withdrew this point.

As the assessee has thus failed on all the points raised in the reference, which was made at his instance he must pay the cost of the opposite party. I would assessee the hearing fee at Rs. 100. The fee deposited by him will be retained by the Bihar Board of Agriculture.

FAZL ALI, C.J. - I agree.

BEEVOR, J. -I agree.

Reference answered accordingly.