(1949) 01 PAT CK 0004

In the Patna High Court

Province of Bihar — APPELLANT

Vs

Janku Kuer — RESPONDENT

Date of Decision : 19-01-1949

Acts Referred:
Bihar Agricultural Income Tax Act, 1938 — Section 25(2)

Citation : AIR 1949 Patna 486

Hon'ble Judges : Meredith, J;Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is a reference u/s 25, Clause (2), Bihar Agricultural Income Tax Act, 1938, for the opinion of this Court upon the following question:

When a landlord obtains a decree for arrears of rent for agricultural land, is the decretal amount, with or without the costs forming part of the said amount, agricultural income of the landlord and is it assessable to agricultural income tax?

2. The question as framed is most unfortunate because it does not at all cover the facts which really arise for consideration.

3. Instead of remanding the case for a proper statement after formulating the real point of law, the parties agree before us that the question of law which arises for consideration upon the facts found is whether the amount realised by the assessee when he makes a settlement of the lands purchased in execution of rent decrees with a person, whether he is the original tenant or a stranger, is agricultural income within the meaning of the Act.

4. The reference arises out of the assessment; proceedings for the year 1948-44 corresponding to 1350 Fasli. One of the items which has been in. eluded in the assessable income is the decretal amount including costs Rs. 1,15,394 15-11. From this 20 per cent, has been deducted on account of the costs. The description of this amount at page 3 is misleading. The real fact is as stated at page 15 in the resolution of Mr. Lee, Member of the Board of Revenue, dated 9th November 1945:

This sum represents the amount of arrears of rent for which the holding was sold up together with costs of the legal proceedings, and according to the custom of the Bettiah Raj the assessee re-settles these holdings either with the old tenant or with a new one for exactly what was due from the old tenant plus the costs.

It is further stated that it is admitted that the assessee could, if he wished, treat these holdings as bakasht and settle them at enhanced salamis, but the Raj generously adopts the course of settling with the old tenant if he can produce the money or failing him, with any other raiyat at only what was due as arrear rent and expenses. The question, therefore, for decision is whether the so-called decretal amount should be taxed not as salami but as rents.

5. Upon these facts it is clear to me that if the decretal amount together with costs have been realised or deemed to be realised in a particular year, the amount less the costs which may be allowed to be deducted by the Agricultural Income Tax Department must be treated as agricultural income for that year. If, on the other hand, after the holdings have become bakasht in the sense that the Bettiah Raj has become the auction-purchaser, the holdings are settled in the same year or in a later year with the same tenant or with another person, then the amount realised for the settlement would fall to be treated as salami and not taxable under the various decisions of this Court.

6. After receipt of our view upon the two alternative questions stated above, the agricultural Income Tax authorities will proceed to dispose of the case accordingly; that is to say, if they find that in the assessment year a particular sum has been realised or deemed to be realised by the sale of holdings then that amount after giving a proper deduction for the costs must be held to be taxable, but if, on the other hand, the particular sum is found to be the salami received on account of the settlement with the tenant or with a stranger, then that amount will not be taxable.

7. In the peculiar circumstances of this case, we make no order for the costs of this Court.

8. I would like to draw the attention of the Board to the undesirability of sending up questions in an abstract form. It was pointed out by their Lordships of the Judicial Committee in AIR 1933 101 (Privy Council) , that abstract questions divorced from the facts of the particular case should not be submitted for decision to the High Court.

Meredith J.

I agree.

9. The question referred to us which, as my learned brother has pointed out, has been unfortunately worded is whether decretal amounts realised in execution of rent decrees are assessable to agricultural Income Tax. That question has been already fully answered by a Bench of this Court, of which I was a member, in Miscellaneous Judicial case No. 146 of 1948 decided on 16th September 1948,

and it is unnecessary to add anything to what was said in that judgment. But with regard to salami, which of course may not be realised in the same year as the decretal amount, it has been pointed out by the Board that it was settled in 1941 by two judgments of this Court in Rani Bhuneshwari Kuar Vs. The Commissioner of Income Tax, and PROVINCE OF BIHAR Vs. MAHARAJA PRATAP UDAI NATH SAHI DEO OF RATUGARH AND ANOTHER., that salami cannot be treated as agricultural income unless the agricultural Income Tax officer can find definite facts establishing it to be such income. It is indeed obvious that when the assessee is taxed on the decretal amount deemed to be realised by him when he himself purchases the holding in execution, if subsequently he settles that holding upon a salami equal to the decretal amount, then to tax him over again on the same amount as salami would amount to double taxation.