

(1947) 02 PAT CK 0002
In the Patna High Court

Province of Bihar

APPELLANT

Vs

Kamakhya Narayan Singh

RESPONDENT

Date of Decision : 12-02-1947

Acts Referred:

Bihar Agricultural Income Tax Act, 1988 — Section 25(2), 6(g), 6(i)

Citation : AIR 1947 Patna 371

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

Bench : Full Bench

Judgement

Manohar Lall, J.—This is a reference u/s 25(2), Bihar Agricultural Income Tax Act, 1988, (hereinafter to be referred to as the Act) by the Bihar Board of Agricultural Income Tax asking for the opinion of the Court as to whether certain claims made by the assessee for deduction out of his agricultural income are well-founded.

2. Raja Bahadur Kamakhya Narayan Singh of Ramgarh is the assessee and he has been assessed for the year 1942-43 on his agricultural income for the previous year 1941-42.

3. Claim No. I.--A sum of Rs. 30,19412-0 was claimed for deduction on account of depreciation charges for various buildings of the assessee, such as Manager's quarters, Legal Secretary's quarters, Assistant Manager's quarters, Finance Secretary's quarters, etc. The Income Tax Officer has disallowed half the sum claimed on these findings: (1) These employees of the Raj are not only required for earning agricultural income but also non-agricultural income which is more than the agricultural income. (2) The assessee is planning a new town at Padma and has shifted his office here and this has led to the construction of the new office buildings. The Commissioner in upholding this decision based his conclusion on the terms of Section 6(g) and held that the maintenance of these buildings was required for earning both non-agricultural income and for the collection of rents, and as the income for rents was not greater than the non-agricultural income, he thought that the Income Tax Officer's order was justified.

The Commissioner was wrong in relying upon the terms of Section 6(g). The present case is covered by Section 6(i) and not Section 6(g). The Board, however, correctly refers to Section 6(i) but observes that it is mainly a question of fact whether the users of the office and the occupants of the houses are solely employed in the collection of agricultural income and thought that the Income Tax Officer was justified in finding as to how much depreciation should be allowed.

4. In my view the assessee was entitled to the entire deduction claimed u/s 6(i). There is no finding of the Income Tax Officer that these buildings were not constructed for the benefit of the land from which agricultural income is derived or for the purpose of deriving such agricultural income from such land. His finding is that these employees of the Raj are not required for earning agricultural income but also for non-agricultural income. I see no justification for adding the word "wholly" before the words "for the benefit of the land or for the purpose of deriving such agricultural income" in the clause as the Income Tax authorities appear to have done. If once it is found that the buildings have been constructed for the benefit of the land or for the purpose of deriving agricultural income from the land the whole depreciation must be allowed. I can conceive of a case where the assessee derives a very small agricultural income and the whole income is substantially non-agricultural. In that case his claim for deduction would be disallowed on the finding that these buildings are not required for the benefit of the land from which agricultural income is derived, etc.

5. If the matter is looked at from another point of view, the same conclusion is reached. The land of the assessee is one unit and yields both agricultural and non-agricultural income. The agricultural income, therefore, is derived from that unit and on the finding that the building has been constructed for the benefit of the unit from which agricultural income is derived, the terms of the-sub-clause are satisfied. There is an analogous provision in the Indian Income Tax Act, the construction whereof has been the subject of decision by two cases of this Court. By the proviso to Section 2, Income Tax Act, agricultural income also means any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, etc., provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue or the cultivator, etc, by reason of his connection with the land requires as a dwelling house or as a store house or other out-building.

6. In *Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax*, it was found that the assessee had a guest house standing in his compound at Darbhanga which was used principally for accommodating European guests and such other persons who might arrive on social occasions and also those who had reason to visit the assessee officially or in connection with the business of the estate which was of vast dimension. Upon these facts the Commissioner took the view that:

Under Section 2, Sub-section (1)(c) of the Act, such a house can only be exempt if and in so far as it does not exceed the necessary requirements of the assessee having regard to the position which he holds by reason of being a Zamindar deriving his income from land...that if in fact he has other sources of income then this is a matter to be taken into consideration, for income derived from such sources may make him a person of some importance and social position, and therefore he may require a large house than would be the case were he merely a Zamindar...that he does not require this guest house as a Zamindar but merely because he is a person of great wealth and social position. How the assessee in this case does not derive his income exclusively from agriculture and indeed he has been exempted in respect of the valuation of a portion of his Calcutta house on the ground that that house is partly required by him for business purpose. The case of the department then is that if this building, called Chatra Bhawan is required by him, it is not required by him in his capacity as a Zamindar or by reason of his connection with agriculture but really by virtue of the position which he holds as a person of great wealth and social position.

7. The learned Chief Justice dealt with the contention raised on behalf of the Department which is given at p. 656 to the effect that it was a question of fact which was for the Income Tax authorities to decide in each individual case whether a dwelling house owned and occupied by a landowner was in fact larger or more commodious than might be considered necessary for his requirement as a landowner and if the Department considered that it was, then the Department would assess a certain proportion of the annual value of the house to Income Tax and that proportion would depend upon the relation between the assessee's income derived from his estate and that derived from other sources and this will necessarily vary from time to time as his savings increased or diminished, and observed at p. 557:

It has been argued on behalf of the Commissioner that this really is a question of fact of which he is the sole judge, but in dealing with the matter it seems to me that he has not properly construed the section and has applied a test to this case which is not the proper test to be applied. If the Commissioner's view is to be accepted then he would be equally entitled to consider in each case whether a particular house owned by a Zamindar, for which exemption from tax was claimed, was larger than was actually sufficient to supply his needs having regard to the fact that he was a Zamindar. It would be for the Commissioner to say whether he was entitled to this or that extra room, whether he was entitled to have stables, for example, to accommodate so many horses, and in each case if the question is to be regarded merely as one of fact the Commissioner would be the sole judge whether the house was or was not sufficient for the minimum requirements of the assessee. That to my mind is not the intention of the Act. I have referred to the terms of the section, and in my opinion the proper construction is this. Once it is shown that by reason of the assessee's connection with the land he requires a dwelling house in that vicinity then we are not concerned to enquire whether the dwelling house is more commodious than

other persons in the same position would consider sufficient for their actual needs, a matter about which opinion might widely differ. The intention of the Act seems to me to have been that if by reason of his connection with the land the assessee does require a dwelling-house, and it is admitted in this case--at all events no argument has been adduced to the contrary--that he does require a dwelling house in Darbhanga, then the section is complied with in so far as the question of his requirements is concerned, and it is not open to the Commissioner to consider whether the particular class of house is more or less than the actual requirements of a zamindar in his position according to some standard which may vary from time to time in the opinion of different Income Tax Commissioners.

Ross J. agreed with this view.

8. The matter again came up for consideration in *Rajendra Narayan v. Commr. of Income Tax*. A.I.R. 1929 Pat. 449 this time before a Pull Bench consisting of Terrell C.J., Ross, Kulwant Sahay, Wort and Macpherson JJ. The Full Bench, Macpherson J. contra, expressed full agreement with the decision in *Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax*, . At page 6 of the report the learned Chief Justice deals with the argument of the Department that the words "by reason of his connexion with the land requires as a dwelling house" mean that the proviso is only to apply to such portion, if any, of the building as should be needed as a dwelling house etc., or more shortly put the argument was that the word "requires" is used in the sense of "needs" and that the words "by reason of his connexion with the land" mean as applied to this case "for the purpose of collection of the rent or revenue", in these words:

This interpretation, if correct, would leave the taxable proportion of the notional income from the building to be assessed by the Income Tax Officer as a matter of fact and without appeal. Now I can see no indication in the Act of any circumstances which are to guide the officer in assessing the taxable proportion. There is for instance no indication whether the dwelling-house is to be of such a kind as to enable the owner to reside in it for such time as may be necessary for the collection by him of his rents, or whether his family may properly be expected to accompany him, or whether the distance from such other dwelling as he may own ought to be considered, or whether his social prestige or the need of displaying it to his tenants is to be taken into account. All these considerations and many others are according to the Department to be left to the officer as matters of fact within his sole discretion. Had this been the real intention of the Legislature, one would have expected to find in the Act a set of guiding principles. On the other hand for assessing the revenue of a business the Act provides elaborate guides. For this reason alone I am of opinion that the Legislature had no such intention as suggested by the Department.

But apart from this consideration the words of the proviso are not capable of the construction suggested. The word "requires" means that the assessee demands to appropriate the building for the purpose of a dwelling house or as a store-

house or other out-building and the words "by reason of his connexion with the land" mean that only the fact of his being a receiver of rent or revenue or the fact of his being a cultivator or the fact that he is a receiver of rent in kind entitle him to claim any building as a dwelling-house, a store-house or an out-building. If he should not occupy any of these positions in connexion with the land, he is not entitled to claim as tax free, accommodation of the kind specified. In other words the expression "by reason of his connexion with the land" is merely used to explain the nature of the class of persons entitled to exemption.... Of course there must be a bona fide use of the building as a dwelling-house, store-house or out-building and the assessee is not at liberty to claim arbitrarily the exemption of any building which he may at his own choice describe as a dwelling-house, storehouse, or out-building without regard to the actual facts.

Ross J. also gave reasons at length for coming to the same conclusion. Wort J. also gave reasons for the same view. Kulwant Sahay J. while agreeing with the learned Chief Justice, Boss and Wort JJ. observed:

It would no doubt be open to the Income Tax authorities to hold that a particular building on account of its size or situation is not a building which the receiver of rent or revenue does require, by reason of his connection with the land as a dwelling house and in that case it would be open to them to assess the income from the entire building, but the moment they find that the house is required by the receiver of the rent or revenue by reason of his connection with the land as a dwelling house or a store house or other out-building, it is beyond their jurisdiction to determine what portion of the building is or should be required by the assessee as such receiver of the rent or revenue.

9. Macpherson J. on the other hand dissented from this view and thought that the connotation of the expression "by reason of his connection with the land requires" must be needs as appropriate and convenient for his calling as a receiver of the rent or revenue derived from the land," and as an illustration he took the case of the Indigo Concerns of North Bihar and observed that the legislature could not have intended to exempt the purchasers of the Indigo concern from Income Tax on the building, as

to my mind language has been employed which indicates an intention to discriminate between the requirements of the assessee as the landlord and his requirements as an individual.

10. This view of Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax, which was expressed in 1928 has stood unchallenged for 20 years and the legislature when they framed the Bihar Agricultural Income Tax Act must be presumed to be aware of this view, and if they wanted to depart from this view, they would have taken care to express themselves clearly by providing in Section 6(i) that only that portion of the depreciation will be allowed as can be found on the fact to relate to that part of the building which is being used by the occupiers for the benefit of or for the purpose of deriving agricultural income from a part of

the land only.

11. I would also hesitate to differ from the opinion of the two learned Chief Justices of this Court and of *Ross, Wort and Kulwant Sahay JJ.* If I may say so respectfully, I have come to the same independent conclusion upon the construction of Section 6(i) itself.

12. In a recent case reported in *Central Provinces and Berar Provincial Co-operative Bank, Ltd. v. Commr. of Income Tax*. AIR 1946 Nag. 216 the assessee, a bank, had borrowed money for the purpose of investing in tax-free and taxable securities and it was found difficult to allocate any particular borrowing to any particular investment. It was held that in computing the income u/s 8, Income Tax Act, the Department was not justified in splitting up and apportioning the interest on the borrowed capital between the taxable and tax-free securities in proportion to the amount spent on the purchase of each kind of security and allowing deduction only in respect of the interest so apportioned to taxable securities. It was argued before the learned Judges that if the contention of the assessee was accepted, the assessee would be obtaining a double advantage. But this argument was negatived in these words at p. 481:

We consider it idle to enquire whether the assessee obtains a double advantage, upon this interpretation or that, or whether the Central Government stands to gain or lose. That is the wrong approach to the problem. The question of advantage or loss depends upon the rules, not the rules upon the outcome of the result, because we are not concerned here with abstract logic or the principles of pure reason. The Income Tax Act is a fiscal measure and as such many of its provisions are of necessity arbitrary, and in almost any set of arbitrary rules an advantage here or a drawback there are almost certain to occur, nor indeed is there anything to prevent the legislature from desiring and prescribing for just such a result. Our duty is to interpret the provisions of the Act and, if they are plain, to give effect to them regardless of the consequences; and if there is ambiguity, to construe the provision in favour of the subject and this even if it results in his obtaining a "double advantage." That is how all fiscal enactments are to be construed.

And again at p. 485:

The Commissioner contends that unless the first proviso is taken to refer to taxable securities only, there is an overlapping which will give the assessee a double advantage; therefore, the two must be construed in that sense. But as we have said that is putting the cart before the horse. There is no reason why the assessee should not get a double advantage if the Act can be so construed. If the language is plain, there is nothing more to be said. If it is ambiguous, then, being a fiscal enactment, it must be so construed because that is the construction which most favours the subject.

At p. 486 the learned Judges give this example:

Agricultural income is exempt u/s 4(3)(viii). But say a man's business is partly agricultural and partly commercial, the commercial end of it being mixed up with the agricultural. Say he runs one office and one staff to supervise both sections. Would he have to apportion the office expenses which are permissible as a good deduction u/s 10(2)(xii) between the two kinds? We can hardly think that that would be the case.

13. Applying these observations to the present case, the assessee has constructed a building for the benefit of the land. It is immaterial to consider whether the land also produces non agricultural income, and it is also immaterial to consider that upon the plain construction of the provisions of Section 6(i), the assessee might be getting a double advantage not under the Agricultural Income Tax Act when he is being assessed on his non-agricultural income under some other statute.

14. For these reasons, I am of opinion that the Income Tax Department were wrong in allowing the assessee only half the depreciation. These buildings are required to be occupied by the staff of the assessee for earning agricultural income and there is no warrant in the Act for holding that the staff should be confined to a particular room or only a few rooms in the whole building.

15. It may be observed that the word "requires" which was the subject of contention in the two Patna cases is not to be found in Section 6(i) although it is found in Section 6(g), Agricultural Income Tax Act. The whole of the claim should, therefore, be allowed.

16. Claim No. II.--This claim is regarding the depreciation of a pucca road leading from the Hazaribagh. Barhi Road to Padma with branch road leading from it to the quarters of various employees. The Income Tax department has found as a fact that this fine pucca road was not constructed for the purpose of deriving agricultural income but that a road existed previously from the public road to Padma and that it is unnecessary for the collection of agricultural income to construct another road costing about two lacs of rupees. It is argued by Mr. L.K. Jha on behalf of the assessee that the road is essential for the tenants to pass thereon and also for the employees of the estate to go to the various quarters. This, however, is a question of fact, and upon the finding that this road is not required for the benefit of the land from which agricultural income is derived or for the purposes of deriving such agricultural income from such land, the claim has been rightly rejected.

17. No claim with regard to any other item was advanced before us.

18. In view of the divided success of the parties, I would direct that each party will bear his own costs of the hearing in this Court.

Meredith, J.

19. I am afraid I am unable wholly to agree with my learned brother, Manohar Lal J. The question referred to us is whether an assessee under the Act is

entitled to deduct the full depreciation at the prescribed rate on capital assets which were constructed partly for the purpose of deriving agricultural income and partly for other? purposes. With regard to the claim regarding the depreciation of the pucca road leading from the Hazaribagh-Barhi road to Patna (Padma?) I agree that this question is concluded by a finding of fact that the road was not constructed for the purpose of deriving agricultural income. The claim has, therefore, been rightly rejected.

20. With regard to the remainder my learned brother says:

When it is found that these buildings are required for earning agricultural income, the mere fact that they are also available for the use and are actually used for earning non-agricultural income of the assessee is no ground for splitting up the depreciation. The whole of the claim should be allowed.

It seems to me that upon this basis it might be argued with equal force that the whole of the claim should be disallowed. I think the words

purchased-or constructed for the benefit of the land from which such agricultural income is derived, or for the purposes of deriving such agricultural income from such land

should be interpreted as meaning "constructed wholly or mainly for such purposes." If they are constructed mainly for other purposes and only incidentally for the purposes specified, then I do not think the assessee is entitled to claim deduction of the entire depreciation.

21. The items in regard to which the claim was originally made are set out at pp. 14 and 15 of the paper-book. With regard to serials 1 to 5, the Income Tax Officer's finding is that they are required not only for earning agricultural income but also non-agricultural income which is more than the agricultural income, that is to say, they were mainly constructed for non-agricultural purposes, the assessee's income being mainly non-agricultural. The Department has allowed half the depreciation. This might well have been less. On the question of principle I see no reason why the Income Tax Officer should not apportion the charges on the basis of his findings of fact.

22. In regard to serials 6 to 12, the claim has been fully allowed, and so no question arises.

23. Serial 18 is the pucca road already referred to, Serial 14 relates to a claim which has been allowed. The claim in respect to serial 15 has been disallowed, and has not been pressed before us. As to serial 16, it has been allowed.

24. Serial 17; here it has been allowed in half. It relates to a wall erected round the Raj quarters. Half has been allowed on the same basis as serials 1 to 5. In my judgment it cannot be said that the department was not entitled to take that course.

25. Serial 18, five Dualop carts--This has been disallowed, and the claim has not

been pressed before us.

26. Serial 19 has been allowed. Serial 20, horse stable, has been disallowed, and on its findings the department was entitled to disallow it.

27. Serial 21, press building--This was disallowed, and the claim has not been pressed before us.

28. I would answer the reference in the negative. I think the department is entitled to investigate what proportion of the building in question is to be considered to have been constructed for the purpose of deriving agricultural income.

Shearer, J.

29. I agree with Manohar Lall J. The residential quarters which the assessee has constructed for his manager and some of his other employees are not used by the assessee himself; they are used wholly and exclusively by those of his employees who reside in them and their families. Are they, then, capital assets within the meaning of the expression as it occurs in Clause (i) of Section 6 of the Act? The expression has not been defined; but, I think, I may take it that, when money, which comes out of capital and not out of revenue, or income, is expended, once and for all, in order to bring into existence some fixed asset, the object of creating which is to enable the assessee to increase his agricultural income, the asset is a capital asset and an allowance in respect of depreciation is permissible u/s 6(i). The assessee has decided to locate the headquarters of his estate at Padma instead of at Ramgarh, and at Padma, as I understand the position, persons occupying the social status, and living in the manner that his manager and some of his other more highly paid employees do, would find it difficult and, perhaps, quite impossible to obtain suitable accommodation for their families and themselves. By constructing these residential quarters the assessee may, therefore, fairly be said to have ensured that those employees of his will continue in his service, and, even assuming that if they had been left to find accommodation for themselves they would not have resigned, will be more contented and more efficient in the discharge of their duties. In so far, however, as they will be, the agricultural income derived by the assessee is likely to be increased. In Tax Cas 155, *British Insulated and Helsby Cables Ltd. v. Atherton*. 1926 A.C. 205 the question arose as to whether a company was entitled to a deduction in respect of a considerable sum of money which it had expended in creating the nucleus of a pension fund for its employees. The deduction was disallowed on the ground that the money came out of capital and not out of income, and under the provisions of the British Income Tax Act was, therefore, not admissible. The opinion was, however, expressed

that a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade." Cave

L.C. said that the payment in question "was made for the sound commercial purpose of enabling the company to retain the services of existing and future members of their staff and of increasing the efficiency of the staff.

On this principle these residential quarters may, in the circumstances of this particular case, be regarded, I think, as a capital asset, and an allowance for depreciation is admissible. It is altogether irrelevant that these employees, or some of them, may, perhaps, be employed on duties which have nothing to do with the collection of the assessee's agricultural income. In any case, it would be inequitable to allow less than the full deduction, as, so far as I can see, no deduction is admissible to the assessee under the Indian Income Tax Act (11 [XI] of 1922). The case of the estate office and the compound wall surrounding it stands on a different footing. I was at one time inclined to take the view that, if separate blocks or wings of this building were occupied by staff employed on the collection of agricultural income, and other blocks or wings were occupied by staff employed in connection with the other business activities of the assessee, then the former portion of the building alone might be regarded as a capital asset, the cost of constructing that portion might be computed and a deduction allowed on it. On further consideration, however, I am of opinion that to take this view would amount, or come dangerously near, to reading into the Act the words "wholly or mainly", which, on general principles of construction, it is not open to us to do. Also, it would be impossible to say what depreciation should be allowed on the compound wall. That, for some reason or other, was dealt with by the Agricultural Income Tax Department as a separate item, but clearly it and the buildings included within it together form one capital asset. Section 10, Sub-section (2), Clause (vi), Income Tax Act, permits of an allowance in respect of depreciation of buildings "used for the purposes of the business, profession or vocation."

It was apparently found that, as a result of the way in which this clause was drawn, certain assessees were allowed larger deductions than were thought permissible or desirable. In order to remedy this defect the legislature in 1939 inserted Sub-section (3) in Section 10, which provides that:

Where any building...in respect of which any allowance is due under...clause (vi) of Sub-section (2), is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building...was wholly so used.

The conclusion to be drawn from the omission of the legislature to use similar clear and unequivocal language when it enacted Section 6(i), Bihar Agricultural Income Tax Act, is, in my opinion, either that it overlooked the contingency which has arisen in this particular case or considered it so unlikely to arise as not to be worth while providing against or considered it undesirable to confer a discretionary power of this kind on Agricultural Income Tax Officers who were likely, for some time at least, to be men with little or no experience of this kind

of work.

By Court.

30. Claim No. I: The entire sum of Rs. 30,194-12-0 should have been allowed as depreciation for the various buildings of the Raj.

Claim No. II:--The depreciation on account of the construction of the Hallet Road has been rightly disallowed.