(1944) 02 PAT CK 0013

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 69 of 1941

PROVINCE OF BIHAR APPELLANT

Vs

P. C. LAL CHOUDHURY. RESPONDENT

Date of Decision : 15-02-1944

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

Citation : AIR 1944 Patna 352 : (1945) 13 ITR 309

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

Bench : Full Bench

Judgement

MANOHAR LALL, J. - This is a reference by the Board of Agricultural Income Tax, Bihar u/s 25 (2) of the Bihar Agricultural Income Tax Act (Act VII of 1938) for the answer of the following three question : (1) Whether Rs. 20,306-1-6 1/2 representing interest on arrears of rent is not agricultural income. (2) Whether that portion of the income which was realised by a receiver appointed by the High Court of Calcutta from the properties of the assessee in his possession is not taxable as the agricultural income of the assessee. (3) Whether the amount of Rs. 3,776-9-0 paid by the assessee to his sister Chamela Kumari, as an annuity under a deed of compromise charging the payment on his properties should have been deducted from his assessable income.

Question 1. - For the reasons given in Lakshmi Daiji v. Income Tax Commissioner this question must be answered against the assessee.

Question 2. - The facts found are that a number of properties enumerated in para. 5 of the petition at page 5 belonging to the assessee are in possession of Mr. B. Das, Barrister-at-Law, a receiver appointed by the Calcutta High Court, and he received the income from these properties; but the agricultural Income Tax authorities have included this sum in the assessable income of the assessee on the ground that

"When property is in the hands of a reviver it is merely being managed on behalf of the owner. The assessee is still the full owner of the property, the income from it accrues to him, and there is no provision in the Act for its exclusion".

The attention of the agricultural Income Tax authorities does not appear to have been drawn to the provision of Section 11 of the Act which provides that where

"a person holds land from which agricultural income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of beneficiaries, agricultural Income Tax shall be assessed on the total agricultural income derived from such land at the rate which would have been applicable if such person had held the land exclusively for his own benefit, and the agricultural Income Tax so payable shall be assessed on the person holding such land, and he shall be liable to pay the same."

In this case the receiver is in possession of the properties from which agricultural income was derived and he holds it for the benefit of the assessee. It is, therefore, clear that it is the receiver who must be assessed and not the assessee. It is true that the assessee is still the owner of the property, but the receiver cannot be treated as the agent of the owner. The assessee has no control over the receiver who is an officer of the Court responsible to the Calcutta High Court who has appointed him. It was suggested that the word "beneficiaries" being in the plural the section cannot apply in this case where the beneficiary is a single person. But the word "beneficiaries" in the plural must include a single beneficiary so as to meet the requirements of a particular case : see the provisions of the General Clauses Act. If the receiver is not the agent of the assessee, it must follow that the assessee has never received this income. For these reasons the answer to this question must be in favour of assessee.

Question No. 3. - The provision of Section 11 of the Act considered above give the answer to this question against the assessee. Mt. Chamela Kumari is a beneficiary entitled to a portion of the agricultural income which is in possession of the assessee. The assessee is, therefore, assessable on the entire agricultural income received without any deduction for the amount payable or paid to the beneficiary. As the assessee has succeeded on the second question by which half the assessable income will be reduced, I would direct party to bear his own costs of this Court. The assessee is entitled to refund of the fee of Rs. 100 deposited by him u/s 25 (2) of the Act.

FAZL ALI, C.J. - I agree.

BEEVOR, J. - I agree.

Reference answered accordingly.

