
(1948) 09 PAT CK 0009

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 129 of 1947

PROVINCE OF BIHAR

APPELLANT

Vs

RAI BAHADUR KHETRA MOHAN KUNAR.

RESPONDENT

Date of Decision : 28-09-1948

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 25(2), 26

Citation : AIR 1949 Patna 418 : (1949) 17 ITR 286

Hon'ble Judges : Agarwala, C.J.;Meredith, J

Bench : Full Bench

Judgement

MEREDITH, J. - The following two questions have been referred to us for decision by the Board of Agricultural Incomes-tax u/s 25(2) of the Bihar Agricultural Income Tax Act, 1938 :-

"(1) Whether, in view of Section 26 of the Bihar Agricultural Income Tax Act, 1938, the Board is competent to set aside, over a year after the end of the financial year for which tax has been assessed, an order passed on appeals reducing an assessment and to restore the original assessment.

(2) Whether in the circumstances of this case the interest due on loans raised by the assessee for the payment of his ordinary debts is not an income, and as such not assessable in the hands of the receiver."

The reference relates to the assessment of the Handwa Estate on the district of the Santal Parganas for the financial year 1944-45 (1351 Fasli). This estate is in the hands of a receiver, Rai Bahadur K. M. Kunar, and is a Ghatwali tenure under the Banaili Raj paying an annual rent of about Rs. 12,000. As the rent was in arrears, the Banaili Raj instituted rent suits and obtained decrees for arrears of rent amounting to about Rs. 1,16,000 besides interests and costs. Subsequently there was a compromise between the parties whereby a receiver was appointed who was ordered to raise loans to pay the decretal amount, and the amount of these loans was to be a first charge on the income of the estate. Loans were

raised from time to time, and during the accounting year (1351 Fasli) interest thereon amounting to Rs. 56,664-5-3 was paid. This sum was claimed by the assessee as a permissible deduction from the total agricultural income under clause (j) or (k) of Section 6 of the Act. The Agricultural Income Tax Officer disallowed this and included the sum in the assessable agricultural income. On appeal by the assessee, the Commissioner allowed the deduction. The Government Pleader then, on the October 26, 1945, filed a revision petition before the Board urging that the deduction was not permissible, and the Board, by an order dated the November 23, 1946, set aside the order of the Commissioner on appeal and restored the original assessment. The assessee then applied to the Board for statement of a case. The Board refused to refer the question whether the amount was a permissible deduction u/s 6, but did refer an alternative contention raised that this sum could not be regarded as agricultural income of the estate at all.

I shall deal with the two questions in turn. As to the first, three sections of the Agricultural Income Tax Act are material, and I quote them :-

"24. (1) The agricultural Income Tax authority immediately superior to the authority disposing of an appeal u/s 22 may call for the record of such appeal.

(2) On receipt of the record such superior authority may make such enquiry, or cause such enquiry to be made, and subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

(3) Any order passed under sub-section (2) shall be final, subject to any reference made to the High Court u/s 25."

"26. If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year, or has been assessed at too low a rate the Agricultural Income Tax Officer may, at any time within one year of the end of that financial year. Serve on the person liable to pay Agricultural Income Tax on such agricultural income or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in the notice under sub-section (2) of Section 17, and may proceed to assess or re-assess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be."

"27. (1) The authority which passed an order on appeal or revision may, at any time within one year from the date of such order, and the Agricultural Income Tax Officer may, at any time within one year from the date of any demand made

upon an assessee, of his own motion, rectify any mistake apparent from the record of the appeal or assessment, as the case may be, and shall within the like period rectify any such mistakes as has been brought to his notice by such assessee :

Provided that no such rectification shall, if it has the effect of enhancing the assessment, be made unless the appellate authority or the Agricultural Income Tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Agricultural Income Tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Agricultural Income Tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued u/s 21, and the provisions of this Act shall apply accordingly."

Section 24 is the section which gives the Board power to interfere in revision, and it will be noticed that no period of limitation is fixed, and, subject to the provisions of the Act, the revising authority may pass such orders as it thinks fit. Under the third sub-section the order passed shall be final subject to any reference made to the High Court u/s 25.

Section 26 enables the Income Tax Officer to re-open the assessment for the purpose of charging to tax any income which has escaped assessment or has been assessed at too low a rate. Under this section, however, he must act within one year of the financial year for which the assessment has been made, and is to initiate the proceedings by a notice containing all or any of the requirements which may be included in a notice u/s 17(2).

Section 27 enables the appellate authority within one year from the date of its order and the Income Tax Officer within one year from the date of the Income Tax demand to rectify any mistake apparent on the record of the appeal or assessment, as the case may be.

In the present case the relevant financial year expired on the March 31, 1945, and the order of the Board is dated the November 23, 1946. It was thus more than one year after the end of the financial year, and it was also more than one year after the appellate order which was passed on the July 28, 1945.

We have been referred to no direct authority on the questions submitted to us. But there are numerous authorities on the corresponding provisions of the Income Tax Act (XI of 1922). These provisions, as they stood prior to amendments made in 1939, are closely analogous to the provisions of the Agricultural Income Tax Act, and were as follows :-

"33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the power of an Assistant Commissioner under sub-section (4) of Section 5.

(2) On receipt of the record the Commissioner may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard."

"34. If for any reason income, profits or gains chargeable to incomes-tax has escaped assessment in any year or has been assessed at too low a rate, the Income Tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22 and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be."

"35. (1) The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision u/s 33 and the Income Tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by the assessee :

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the Assistant Commissioner or the Income Tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income Tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income Tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under Section 29, and the provisions of this Act shall apply accordingly."

The first case on the point which has been cited before us is R. S. Lala Jessa Ram

v. Commissioner of Income Tax, Punjab and N.W.F. Provinces. In this case in 1927 a Bench of the Lahore High Court held that the powers of the Commissioner of Incomes-tax u/s 33 are subject to the same restrictions as those of the Income Tax Officer u/s 34 to 35. In this case the assessee was assessed to Income Tax on an income of Rs. 23,434, but the Income Tax Officer made calculations at the rate of 1 anna in the rupee instead of 1 anna 3 pies, which was the proper rate. The assessee applied to the Commissioner to exercise his powers of review u/s 33. The Commissioner allowed certain deductions as irrecoverable loans, but made a calculation on what was left at 1 anna 3 pies, so that in the result the Income Tax demanded exceeded the amount for which the notice of demand had originally been issued on the December 21, 1923. The order was dated the December 15, 1925, the rectification thus being made after the period of limitation had expired. The Court held that u/s 33 the Commissioner was not entitled to pass any order which he himself or any other Income Tax authority was not authorised to pass under the other provisions of the Act. His powers were subject of the same restrictions as those of an Incomes-tax Officer u/s 35. If the case were held to be governed by Section 34, it made no difference. The expression "subject to the provisions of this Act" included the restrictions as to limitation imposed on other Income Tax authorities and the rectification of the mistake to the prejudice of the assessee after the expiry of one year from the date of the demand was not authorised by law. To hold otherwise would mean that there was no limit to the Commissioners powers to reopen and alter assessments to the prejudice of an assessee, a position that the Legislature could not have contemplated.

The next case, also of 1927, is from Madras, Messrs. Sheik Abdul Kadir Maracayar & Co. v. Commissioner of Income Tax, Madras. The Court held that for the purpose of initiating re-assessment proceedings Section 33 of the Act was subject to the provisions of Section 34. In this case the Income Tax Officer had first taken steps for re-assessment u/s 34, and accordingly issued a notice upon the assessee for a fresh return of their income, and thereafter made an enhanced assessment and issued a fresh demand notice. The assessee applied unsuccessfully to have the re-assessment set aside on the ground that the Section 34 notice had not been properly served. They then appealed. And the Assistant Commissioner set aside the re-assessment order on the ground that there had been no valid service of notice. After the expiry of the period for notice laid down in Section 34, the Commissioner purporting to act u/s 33 restored the re-assessment, and further levied a penalty u/s 28. In doing so he did not upset the finding of the Assistant Commissioner that the notice was not legally served. It was held that his action u/s 33 was illegal. What the Commissioner had done was, acting u/s 33, to take up the proceedings u/s 34 from the stage of notice and to re-assess the parties by virtue of his revisional powers u/s 33. The Court said that the power to re-assess was given expressly only by Section 34, and this particular section prescribed the condition precedent to any such valid re-assessment, namely, service within one year of a proper notice on the assessee.

The power of re-assessment was given in express terms only to the Income Tax Officer, and not to any other officer. If it was intended by the Legislature that the Commissioner or the Assistant Commissioner should have similar powers, there was no reason why all of them should not have been mentioned in Section 34 as in the case of Section 28. When it is a question, they said, of re-opening an assessment already completed and when the statute prescribes the particular mode in which alone reassessment can be effected, it is clear that the condition should be already observed before the power is purported to be exercised. In the absence of service of notice within the year as indicated in Section 34, it was not open to the Commissioner to serve another notice after the lapse of the year and seek to re-assess the parties. The matter would have been otherwise had he revised the finding regarding the service of notice, for in that case there would have been a valid re-assessment notice within the period of limitation. They said they found it absolutely impossible to agree to the extravagant claim put forward in the letter of reference that without any limitation as to time the Commissioner under the powers of Section 33 might at any time in respect of any matter pass any order he thought fit. Under the revisional powers the revising authority could only do that which the original authority could have done or ought to have done.

The next case of 1936 is *Nawal Kishore Kharaiti Lal v. Commissioner of Income Tax, Punjab & N.W.F.P.*, another case from Lahore. Here again it was held that though the Commissioner can take action u/s 33 and proceed to enhance the assessment, the exercise of this power is subject to the limitation provided in Section 34.

The Income Tax Officer had made the assessment on July 22, 1933. The Assistant Commissioner dismissed the assessee's appeals and enhanced the assessment on October 31, 1933. The assessee appealed to the Commissioner who dismissed the appeal on September 3, 1934, and on the same day he issued a notice to the assessee u/s 33 to show cause against enhancement, and on 8th October passed an order enhancing the assessable income. The Court held that the extra income must be regarded as income which had escaped assessment within the meaning of Section 34, and as no notice was issued to the assessee within one year of the March 31, 1933, the Commissioner was not entitled to enhance the income.

In 1938 there was a Privy Council decision in *Commissioner of Income Tax, Bombay Presidency and Aden v. Khemchand Ramdas*. The facts of this case were that on January 17, 1927, the assessee was registered as a firm, and they were assessed u/s 23(4) on an income of Rs. 1,25,000. Being a registered firm, no super tax was levied. In February, 1928, the Commissioner, in exercise of his revisional powers, cancelled the registration and directed the Income Tax Officer to take necessary action. The Income Tax Officer accordingly assessed the firm to super tax on the May 4, 1929. It was held that the assessment made on the January 17, 1927, was final both in respect of Income Tax and super tax since no appeal lay against an assessment u/s 23(4). The fresh action taken by the Income Tax Officer on the May 4, 1929, was out of time, though it was taken in

pursuance of the direction of the Commissioner under Section 33. Their Lordships said that after the service of the demand notice u/s 29 about March, 1927, the Income Tax Officer had done all that was required of him under the Act for the purposes of ascertaining the liability of the assessee to Income Tax and super tax for the fiscal year ending on the March 31, 1927. The assessment for the year had become final and conclusive since no appeal shall lie in respect of an assessment made u/s 23(4). The notice of demand for super tax was issued more than one year after the close of the fiscal year ending on the March 31, 1927, and more than one year after the date of the original demand notice. If the Income Tax Officer had no power to make the order, apart from the direction given to him by the Commissioner, the fact that such direction was given made no power to make the order, apart from the direction given to him by the Commissioner. The fact that such direction was given made no difference. After a final assessment it was not open to the Income Tax Officer to go on making fresh computations and issuing fresh notices of demand to the end of all time. The final assessment might not be made until some years after the close of the fiscal year. Difficult questions might cause delay. Proceedings by way of appeal might cause further delay. Until all such questions were determined and all such proceedings had come to an end, there could be no final assessment, but, when once final assessment had been arrived at, it could not, in their Lordships opinion, be reopened except in

the circumstances detailed in Section 34 and 35 of the Act and within the time limited by those sections. The Commissioner's powers u/s 33 could only be exercised subject to the provisions of Sections 34 and 35. Those two sections were exhaustive, and prescribed the only circumstances in which and the only time in which fresh assessments could be made and fresh notices of demands issued.

The next relevant case is of 1940, Commissioner of Income Tax, Burma v. Ved Nath Singh. In this case it was held by the Rangoon High Court with reference to the similar provisions of the Burma Income Tax Act that the Commissioner of Income Tax cannot, in exercise of his powers of revision u/s 33, assess to Income Tax income alleged to have partially escaped assessment without causing proceedings to be initiated by the proper authority u/s 34 of the Act. The Commissioner could not, by purporting to act u/s 33, take action u/s 34 although he could, if the time within which such action must be taken had not expired, direct the Income Tax Officer to take such action. He could not deprive the assessee of his right of appeal by acting in reality u/s 34 in the guise of action u/s 33.

It remains to notice two Bombay cases. The first is of 1943, Commissioner of Incomes-tax, Bombay v. Edulji F. E. Dinshaw. The assessee was assessed by the Income Tax Officer for the year 1939-40 at the rates prescribed in the Indian Finance Act of 1938 as to Income Tax, and at the rates prescribed in the Indian Finance Act of 1939 as to super-tax. On appeal, the Assistant Commissioner held

that super-tax also should be calculated at the 1938 Act rates, and ordered a refund. The Commissioner of Income Tax in revision u/s 33 held that super-tax should be calculated under the Act of 1939 and restored the order of the Income Tax Officer. It was held that what he had done amounted to an enhancement, and that he could not legally do it outside the time limit prescribed by Section 34 though he could have directed the Income Tax Officer to take action u/s 34 within the time limit prescribed. This decision was of Beaumont, C.J., and Kania, J., and their Lordships held that, if the Commissioner thought the appellate order wrong, he should have given directions to the Incomes-tax Officer to proceed to re-assessment u/s 34, but he could not himself act as if u/s 34 and re-assess. Kania, J., said the argument that the figure fixed by the Commissioner was the same as that of the Incomes-tax Officer had no substance because the question was of the interpretation of the section and the Commissioners power under the section. If the power to enhance the figure assessed by the Appellate Assistant Commissioner existed, there was no reason to think that it was limited to putting the assessment up only to the extent originally fixed by the Income Tax Officer.

The other case is Commissioner of Income Tax, Bombay v. Mangaldas Motilal & Co. The Income Tax Officer included in the assessment certain cash items which he considered formed part of the income of the assessee. On appeal, the Assistant Commissioner took the view that these items did not form part of the income, and he, therefore, reduced the assessment. Thereafter the Commissioner issued a notice on the assessee u/s 33, and, after hearing the parties, he set aside the appellate order and directed the Income Tax Officer to make a fresh assessment. It was held by Beaumont, C.J., and Chagla, J., that the powers of the Commissioner u/s 33 were restricted by reason of the words "subject to the provisions of this Act", and, if the Commissioner desired to enhance the assessment u/s 34, he must proceed within the time limited by that section. As the order of the Commissioner was intended to result in an enhancement and was passed more than one year after the end of the assessment year, it was accordingly invalid. This also was a case where the order of the Commissioner was directed towards restoration of the original assessment made by the Income Tax Officer though by way of fresh assessment proceedings.

Upon the basis of these decisions there are prima facie strong analogical reasons for drawing the inference that the revisional powers u/s 24 of the Agricultural Income Tax Act are similarly limited, and that consequently, it was not open to the Board to do what it has done in this case.

The learned Advocate-General however, for the Department advances three reasons why we should not draw that conclusion. He suggests first that this is not a case of income "escaping assessment" within the meaning of Section 26, and Section 26 has, therefore, no application to the case. Income should not be said to have escaped assessment unless it has not been included in the original return, and has been discovered only after the assessment has been made. He

bases this contention upon an observation of their Lordships of the Privy Council in *Sir Rajendranath Mukerjee v. Commissioner of Income Tax*, to the effect that the fact that Section 34 requires notice to be served calling for a return of the income which has escaped assessment strongly suggest that income which has already been duly returned for assessment cannot be said to have escaped assessment within the statutory meaning. All that their Lordships really decided in that case was, however, merely that income could not be said to have escaped assessment until the assessment had been finally completed. Their Lordships is that assessment could be made u/s 23 up to any period, and until it had been made and the demand notice up to any finally issued u/s 29, there could be no question of income escaping assessment. This decision has been fully considered and explained by a full Bench of the Lahore High Court in *Madan Mohan Lal v. Commissioner of Income Tax Punjab and N.W.F.P.* Addison, C.J., and Din Mohammed J., (Dalip Singh, J., dissenting expressly held that Section 34 of the Act is not confined to cases where income had not been returned at all. It applies also to cases where an items of income is included in the return made by the assessee, but is left unassessed by the Income Tax Officer or, if assessed in the first instance, the assessment is cancelled by any appellate or revisional authority. This view was arrived after a full consideration of the case of *Sir Rajendranath Mukerjee v. Commissioner of Income Tax*.

In *Nawal Kishore Kharaiti Lal v. Commissioner of Income Tax, Punjab & N.W.F.P.*, it was again held that Section 34 is not confined to cases where the income has included the notice, but includes case where income has been returned, but has not been assessed.

In the Rangoon case also, *Commissioner of Income Tax, Burma v. Ved Nath Singh*, it was held that income has escaped assessment within the meaning of Section 34 when it has not been assessed in the assessment under consideration. It is immaterial that it has been assessed in some other assessment. The learned Advocate-Generals first contention seems, therefore, to be unfounded.

Secondly, however, he urged that where the revisional order merely resets the original assessment of the Income Tax Officer it is not a case of enhancement at all, but merely of setting aside a wrong order made in appeal, which automatically has the effect of restoring the original assessment, so that in fact there is no enhancement, the regional assessment being the assessment finally adopted.

The argument is undoubtedly attractive, and the point raised is one of some difficulty. Nevertheless such authority as can be found is against the contention, and after most anxious consideration I have come to the conclusion that it is unsound. Several of the cases I have noticed above were case so restoration. *Sheik Abdul Kadir Marakayar & Co. v. Commissioner of Income Tax Madras*, was one where the Commissioner, purporting to act u/s 33 of the act, had restored

the re-assessment made by the Income Tax Officer, and it was nevertheless held to be a case of re-assessment. In *Commissioner of Income Tax, Bombay v. Edulji F. E. Dinshaw*, it was expressly held that restoration of the Income Tax Officer figure, which had been reduced by the Assistant Commissioner on appeal, amounted to re-assessment and enhancement within the meaning of Section 34. *Commissioner of Income Tax Bombay v. Mangaldas Motilal & Co.* was also a case of this type. The Income Tax Officer having included certain items which the Assistant Commissioner on appeal excluded, the Commissioner in revision directed the re-assessment merely with a view to the restoring of the original assessment made by the Income Tax Officer after inclusion of those items of income. The view taken was that the order of the Commissioner was intended to result in the assessment as passed by the Assistant Commissioner being enhanced.

I think the logical basis of these decision is that it is not the assessment of the Income Tax officer which is the assessment finally made, since it is subject to appeal. It is the assessment made on appeal that is the final assessment. Therefore, the order made on revision while purporting to restore the original order, is in reality imposing a new final assessment. This cannot be called merely a restoration of an order. Since the order restored was not final, the final assessment being that made on appeal, the revisional assessment intended to replace it as a final assessment must be regarded as an enhancement. It is reopening of the final assessment, and as the Privy Council has said in *Commissioner of Income Tax, Bombay Presidency and Aden v. Khemchand Ramdas*, the final assessment cannot be reopened except u/s 34 or 35 (Section 26 or 27) and within the period of limitations permitted under those sections.

The learned Advocate-General last argument is based upon a slight difference in the wording of Section 33 of the pre-1939 Income Tax Act as compared with Section 24 of the Agricultural Income Tax Act. In sub-section (3) of Section 24 there is a provision that any order passed in revision shall be final subject to any reference made to the High Court u/s 25. Upon this basis it is argued that since the Act attaches finality to the revisional order, it must be inferred that the Appellate order is not to be regarded as final. This inference, however, by no means necessarily follows. The word "final" is constantly used in legislation where absolute finality is not made, but finally subject to an exception. The provision in Section 24 is itself an example of this since does not say that the revisional order shall be absolutely final, but only final subject to a reference made to the High Court. In exactly the same way it could have been said in Section 22 that the appellate order would be final subject to anything done in revision, and the failure to do so does not mean that it was not that limited finality; for it is perfectly possible for a limited finality to attach both to the appellate order and the revisional order. The correctness of this view is, I think, easily demonstrated by reference to the provision of the Income Tax Act already under notice. There is no provision in the Act making an assessment order u/s 23(4) final. There is merely a provision in Section 30 that no appeal shall lie in

respect of an assessment made u/s 23(4). Yet the Privy Council in *Commissioner of Income Tax Bombay Presidency and Aden v. Khemchand Ramdas* expressly held that the assessment u/s 23(4) was a final assessment which could only be reopened u/s 34 and 35, simply because no appeal lay. Their Lordships expressly said that because no appeal lay the assessment had become final and conclusive. The power of revision was there, but their Lordships did not hold that there was at lack of finality on that account. On exactly the same reasoning it must be held that, where there is an appeal, then the appellate order, from which there is no further appeal, must be final and conclusive despite the existence of the power of revision, and the fact that there is a provision that the revisional order also will have its own finality subject to its own condition in no way prevents the attachment of its finality to the appellate order, since, as I have said, both can have a limited finality; neither has an absolute finality. I can find nothing in the Act which would justify refusing to attach to the appellate order the finality which, the Privy Council held, attached to the order under the Income Tax Act. One must agree with the learned Advocate-General that having regard to the decision of the Privy Council in *Sir Rajendranath Mukerjee v. Commissioner of Income Tax*, until a final assessment has been made, there can be no question of any income escaping assessment, and Section 26 has no application. But I do not agree with him that assessment had not been finally made by the appellate authority merely because Section 34 has attached a conditional finality to the revisional order. The order on appeal was a final assessment subject to a revision just as the revisional order involves a final assessment subject to reference to the High Court. The learned Advocate-General himself insists upon the finality of the revisional order despite its being subject to any reference. The assessee is equally entitled to insist upon the finality of the appellate order subject to the power of revision.

I would answer the first question in the negative. The second question, I think, presents no difficulty. The assessee himself originally treated this sum as income, because he claimed that u/s 6 he was entitled to deduct it from his income. Inclusion and deduction simply that it is first to income in as income, and then to go out. This also seems to be in accordance with the scheme of the Act. The sum in question undoubtedly came in as part of the agricultural income within the definition in Section 2. Section 6 says that the agricultural income mentioned in sub-clause (1) of clause (a) of Section 2 shall be "deemed" to be the sum realised in the previous year on account of agricultural income mentioned in the said sub-clause (1) "after making the following deductions"; and a large number of permissible deductions are specified. It is now settled, however, that the sum with which we are concerned in this case does not fall under any of these heads for deduction. The wording used in Section implies that though the net sum after the deductions have been made to be taken as the agricultural income is the gross, inclusive of the sum which may be deducted, otherwise the word "deemed" would not have been used. Even if upon this wording we have to deem the sums deducted as not forming part of the income, there is no question of any

deductible sum in the case before us. The sum is actually, and also in the eye of legislature, part of the income for the purposes of tax. Reliance is placed upon the Privy council decision in *Raja Bejoy Singh Dudhuria v. Commissioner of Income Tax Bengal*. But was a case of a quite different character, and the basis of the decision that the amount charged for maintenance of his step-mother was not part of the income of the assessee was based upon the fact that this was a charge upon the estate prior to the assessee succeeding to it, so that in a way he took the estate prior to the assessee succeeding to it so that in a way he took the estate subject to the charge or reduced by the amount of the charge, in the present case the owner of the estate merely allowed the rents to fall into arrear, and when a rent decree was obtained against the estate, the receiver borrowed money to satisfy the decree. The fact that the debt became a charge on the estate forms no ground for holding that the interest which had to be paid on that debt never became income of the estate. It was, on the contrary, an obligation charged upon the income and payable from the income.

The answer to the second question, in my opinion, is, therefore, that the amount of the interest due on the loans was income of the estate and assessable in the hands of the receiver.

Though the second question is answered against the assessee, since the answer to the first question is in his favour the income has finally escaped assessment for the year under consideration. The assessee is, therefore, in my opinion, entitled to his costs of this reference, which I would assess at Rs. 250 inclusive of the sum of Rs. 100 in deposit.

AGARWALA C.J. - I agree

Reference answered accordingly.