

(1956) 03 PAT CK 0011

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 360 of 1955

RAJA BAHADURE VISHESHWAR SINGH

APPELLANT

Vs

STATE OF BIHAR.

RESPONDENT

Date of Decision : 31-03-1956

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 28(1), 6(g)

Citation : (1957) 31 ITR 660

Hon'ble Judges : Ramaswami, C.J; Raj Kishore Prasad, J

Bench : Full Bench

Judgement

RAMASWAMI, C.J. - u/s 28 (1) of the Bihar Agricultural Income Tax Act the Board of Revenue has submitted as statement of the case on the following two questions of law :

"(1) Is the assessee entitled, u/s 6 (g) of the Bihar Agricultural Income Tax Act, 1938, to claim deduction of the whole or part of the amount spent over the maintenance of the assessee's residential building and the garden attached to the same ?

(2) Is the assessee entitled to claim a reasonable amount of deduction on account of maintenance expenses for such motor vehicles as may be considered necessary for his zamindari work u/s 6 (g) of the Bihar Agricultural Income Tax Act ?"

With regard to the first question the argument of learned counsel for the assessee is that allowance should have been given by the Taxing Authorities for the cost of repair of the residential house at Darbhanga. The amount claimed was Rs. 24,915 and odd and the claim was made u/s 6 (g) of the 1938 Act, namely Bihar Act (VII of 1938), which applies to this case. Section 6 (g) was in the following terms :

"6. 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 year on account of agricultural income mentioned in the said sub-clause (1), after making the following deductions :

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(g) any expense incurred on the maintenance of any capital asset purchased or constructed before this Act came into force, if such maintenance is required in connection with the collection of rent due in respect of the land from which such agricultural income is derived."

It was submitted by learned counsel for the petitioner that a portion of the building at Durbhanga was utilised by the assessee for office accommodation for the affairs of his agricultural zamindari. Counsel referred in this connection to the resolution of the Board printed at page 22 of the Paper Book. The Board stated in the course of its order as follows :

"In fact, I found it difficult to ascertain from the learned advocate, appearing on behalf of the petitioner, what precisely is the claim made by him in regard to these buildings which justify a conclusion in terms of section 6 (g) of the Act that the maintenance, the costs of which is claimed as deduction under that clause, is required in connection with the collection of rents due in respect of the land from which agricultural income is derived by the petitioner. The somewhat nebulous statement made by him may be summed up on these lines : the Raja Bahadur is the proprietor of the estate; that he has to reside somewhere; that he resides in these buildings at Darbhanga; and that whatever management he does, he does so from his residence at Darbhanga in these buildings. What the Board has been able to gather is that the Raja Bahadur perhaps uses one of the rooms in his residence to dispose of papers pertinent to the Raj. It seems impossible to hold on such tenuous material that the requirements of section 6 (g) of the Act have been fulfilled and that these buildings are required in connection with the collection of rents due in respect of the land from which agricultural income is derived by the petitioner."

We are not, however, prepared to accept the argument of learned counsel that there is any finding of the Board that the assessee was using one of the rooms of his residence to dispose of papers relating to the zamindari. On the other hand, the definite finding of the Agricultural Income Tax Officer and the Deputy Commissioner and of the Board of revenue has been uniform finding that no portion of the building was utilised in connection with the realisation of rent due in respect of the zamindari. It was argued by learned counsel that the finding of fact was vitiated because a wrong line of reasoning has been adopted by the Board of Revenue and also by the Agricultural Income Tax Officer. It was pointed out that the Agricultural Income Tax Officer was not justified in refereeing to the

nature of expenses incurred in the maintenance of the building and draw an inference from that material that the building was used exclusively for residential purposes. In support of this argument counsel referred to the decision of this High Court in *Sir Kameshwar Singh v. State of Bihar*. It may be that the reasoning of the Agricultural Income Tax Officer was wrong, but there is no legal flaw in the finding of fact because the agricultural Income Tax Officer did not come to this conclusion merely on the basis of the nature or repairs made to the building. In any event, it was for the petitioner to produce some material before the Taxing Authorities to show that he was entitled to claim the exemption of the amount under the provisions of section 6 (g) of the statute. The Board of Revenue has rightly pointed out that the assessee did not produce any material and the onus that lay upon him u/s 6 (g) was not discharged. There is, therefore, no substance in the argument of the petitioner that the finding of fact is vitiated in any manner.

Counsel for the petitioner then advanced the argument that even if the assessee was not using any portion for the purpose of collecting rents, the assessee would still be entitled to claim an allowance u/s 6 (g) of the statute. The argument of the petitioner is that it was not necessary to show that the residential building was used either wholly or in part for the collection of rents due in respect of the agricultural land of the zamindari. It was argued that the mere fact that the assessee was a zamindar and that he was deriving the agricultural income was sufficient to entitle him to claim deduction u/s 6 (g). I think this argument is a rather extravagant argument and it is plainly contrary to the language of section 2 (g), which expressly states that maintenance of any capital asset could be deducted by the assessee from the total agricultural income, provided that "such maintenance is required in connection with the collection or rents due in respect of the land from which such agricultural income is derived." The meaning of section 6 (g) is that the assessee must show some kind of nexus between the maintenance of capital asset and the collection of rents due in respect of the land from which the agricultural income is derived. If no such connection or no such nexus is shown, then the assessee would not be entitled to claim a deduction u/s 6 (g). That is the right interpretation of the statute, and applying that interpretation it appears to me that the claim of the assessee in this case was rightly rejected by the Taxing Authorities. Counsel on behalf of the assessee relied in this connection upon a decision of a Division Bench of this Court in *Sir Kameshwar Singh v. State of Bihar* the Maharaja of Darbhanga claimed a deduction of Rs. 56,000 spent on repairs of Raj buildings at Darbhanga. It was found in that case that this amount was spent on the repairs of various buildings, some intended for housing the departments of the Raj Office concerned with collection of rent, some used for purely residential purposes and some used for the accommodation of guests who visited the Maharaja not only in connection with social functions but also in connection with the administration of the zamindari. The question of apportionment arose in that case and it was decided by the Division Bench that the amount spent on repairs could not be

apportioned and that decision was reached because of a previous Special decision of this court in *Province of Bihar v. Kamakhya Narayan Singh*. It should be noticed that the amount of deduction claimed in that case by the assessee was a lump sum of Rs. 56,000 which was not separately apportioned between the various Raj buildings. In the present case the question at issue is different. We are not concerned in this case with the question of apportionment; the question at issue is whether the assessee is entitled to claim the benefit of section 6 (g) with regard to a building no portion of which is used for the management of zamindari estate or for realisation of agricultural rent. It is an entirely different question and it was not the subject-matter for consideration in *Kameshwar Singh v. State of Bihar*. The question of apportionment was the gist of that decision, and, as I have stated already, that is not the question presented for determination in the present case. The ratio of *Kameshwar Singh v. State of Bihar* has, therefore, no application to the present case. For the reasons I have already given I hold that the first question referred by the Board of revenue must be answered against the assessee and in favour of the State of Bihar.

As regards the second question, it was pointed out by the learned government Advocate that the Board of revenue has already remanded the case to the agricultural Income Tax Officer for determining the proper amount of deduction to be given to the assessee u/s 6 (g). It was also argued by the learned Government Advocate that the Board of Revenue had not referred the question of cost of petrol and the pay of the drivers which was the question raised by the assessee in his application to the Board. The matter is not very clear, but I shall assume in favour of the assessee that the second question referred by the Board of Revenue includes the question of the cost of petrol and the pay of the drivers. Counsel on behalf of the assessee pointed out that in its resolution dated the 8th April, 1954, the Board of Revenue has stated as follows :

"Prima facie, a maintenance cost of Rs. 15,000 for eight cars would appear high, and the learned advocate for the petitioner appears to be labouring under a misconception that cost on account of petrol and pay of drivers, which properly come under running costs would be chargeable as maintenance, which is not the case. The Agricultural Income Tax Officer may allow, after scrutiny, such maintenance costs as he deems proper and legitimately claimable u/s 6 (g), not fettered by the limits prescribed in the District Commissioners order."

It was argued by counsel for the assessee the Board of Revenue has not properly interpreted the language of section 6 (g) and the assessee was entitled to a deduction on account of cost of petrol and the pay of the drivers for keeping the motor-cars in proper condition. I do not think it is necessary for the High Court to express any opinion on this point. The reason is that the observation made by the Board of Revenue is only an observation and not a decision and must be read in the context of the whole resolution. The Board of Revenue was remanding the question of quantum of maintenance to the agricultural Income Tax Officer, and I

do not think that the Board intended to decide definitely the question as to the inclusion of the cost of petrol and the pay of the drivers in the calculation of maintenance cost. I think there is no decision of the Board of Revenue on this point and so the question is really academic. I do not, therefore, propose to answer the second question of law referred by the Board of Revenue to the High Court.

But for the reasons I have already given I would answer the first question referred by the Board of Revenue against the assessee and in favour of the State of Bihar. The assessee must pay the costs of this reference. Hearing fee Rs. 200.

RAJ KISHORE PRASAD, J. - I agree.

Reference answered accordingly.