

(1953) 01 PAT CK 0015

In the Patna High Court

Case No : Misc. Judicial Case No. 209 of 1950

Sir Kameshwar Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-01-1953

Acts Referred:

Bihar Agricultural Income Tax Act, 1948 — Section 6, 7
Income Tax Act, 1922 — Section 2(1)

Citation : AIR 1953 Patna 167 : (1953) 1 BLJR 261

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : B.C. De and S.P. Srivastava, for the Appellant; Mahabir Prasad, General, for the Respondent

Judgement

Sarjoo Prosad, J.—In this reference u/s 28 (3) of the Bihar Agricultural Income Tax Act (Act 32 of 1948) read with Section 25 (3) of Act 7 of 1938 the Court called for a statement of case from the Board of Agricultural Income Tax on various points relating to certain deductions claimed by the assessee. There are as many as ten questions involved but the answer to the questions turns upon the interpretation of just a few provisions of the Act embodied in Section 6 or 7 thereof.

2. The questions are whether the assessee is entitled to deductions in respect of : (1) Rs. 56,000/- spent on repairs of Raj buildings at Darbhanga; (2) Rs. 30,000/- paid on account of municipal tax in respect of the said buildings; (3) Rs. 22, 946/- spent on the repair of roads; (4) Rs. 68,085/- spent on the maintenance of the Raj power-house at Darbhanga; and (5) Rs. 1,91,232/- on account of depreciation of building and furniture. I have put these five questions under one head as I propose to discuss them together.

3. The sixth question relates to a claim for deduction of Rs. 83,538/- spent on the maintenance of horses in the stables at Darbhanga; the seventh to a sum of Rs. 23,137/- spent over the Raj Engineering Department; the eighth and ninth to

a sum of Rs. 2,43,159/- adjusted against the capital of a loan advanced to the Tikari Estate, and another sum of Rs. 10,059/- paid to the proprietor of the Lachmipur Estate, respectively, and the tenth and the last question, relates to a sum of Rs. 9,395/4/3 received by the assessee as Dasturat Malikana. The year of assessment to which these questions relate is 1946-47.

4. The Board of Agricultural Income Tax and the officers of the Agricultural Income Tax Department refused to allow the above deductions claimed by the assessee because in their opinion the deductions were not admissible in law.

5. On behalf of the assessee Mr. B. C. De claims that he is entitled to the deductions which form the subject-matter of the first five questions by virtue of the provisions of Section 6(f) and (g) read with Section 6(b) and Clause (f) and (g) of Section 7 of the Act. Clause (g) of Section 6 on which stress has been mainly laid by the learned Counsel runs thus:

"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 rents due in respect of the land from which such agricultural income is derived."

The learned Counsel contends that the repairs of the Raj buildings in question were expenses incurred over capital assets constructed before the operation of the Act and those buildings were required to be maintained for the collection of rents due in respect of the land from which agricultural income was derived. It appears from the relevant facts, stated by the Board, that a substantial sum of Rs. 23,939/- under the head of repairs of Raj buildings was claimed by the assessee in respect of the Nargaon palace at Darbhanga which was constructed sometime ago on the occasion of the visit of some Viceroy. The Department is of the opinion that these buildings were not required in connection with the collection of rent at all.

The Board, however, concedes that if the palaces and other buildings were used for the purpose of collecting agricultural income, the assessee would be entitled to that deduction. It was, however, of the view that these buildings were mainly intended for pomp and show and other luxurious requirements and not for the purpose of deriving any agricultural income. For the assessee, however, it is contended that some of the buildings contained the various departments of the Raj office concerned with the collection of rent and some of the buildings were used for residential purposes although some others might be intended for guests who visited the Maharaja not only in connection with social functions but also in connection with the administration of the Raj. It is not disputed that the assessee is a big landholder of the province and perhaps one of the biggest in India. It is, therefore, submitted that these buildings would be deemed to be used in connection with the collection of rent due in respect of the lands from which the agricultural income is derived, inasmuch as the residence of the assessee and the accommodation of the offices are all necessary for that purpose; and it was not

open to the Agricultural Income Tax Department to examine and scrutinise as to how much of the building was required for rent collection purposes and how much of it was not so required.

The statement of the case on the point is rather vague, because it merely says that the details of the expenditure incurred as given by the assessee to the Taxing Officer were not essential for the purpose of collecting agricultural income. I regret I am unable to understand this. The details of expenditure incurred presumably referred to the expenditure over the maintenance of the buildings and manifestly those details could not show that they were required for collecting rent. The point really for consideration was whether the buildings themselves were required for the purpose of collecting rent or were used for such, a purpose. It is, however, not disputed that those buildings were required for the residence of the assessee and his family and for guests who may happen to visit him and also for the accommodation of his offices" and men for the administration of his zamindari which largely consists of lands. In dealing with the expenses on the repairs of roads and over the maintenance of the powerhouse the Board has remarked that there are no details of the roads maintained: whether they were used for agricultural purposes, that is, to bring in crops etc. from the fields to the town, or whether they were meant for the use of the residents and their convenience. These roads were undoubtedly in Darbhanga and are maintained by the Raj presumably for both purposes though not exclusively for either. Similarly, while dealing with the power-house, the Board observes that it supplied electric energy to the proprietor and his relations and also to other persons and institutions who had nothing to do with the estate, like schools, hospitals etc., and that perhaps such a big power-house was not necessary merely for the purpose of enabling officers to supervise and collect agricultural income.

Under the head depreciation of buildings, it is stated by the Board that it was necessary to come to a specific finding whether the buildings or capital assets were required in connection with the collection of rents due in respect of lands; and on the facts it was difficult to find that the luxurious buildings & palaces were necessary in that connection. The Board, therefore, held that in the absence of details showing what buildings were for offices or for officers, and whether and to what extent the proprietor used them in connection with the collection of agricultural income, the demand could not be allowed. According to the Board, the assessee had to make specific claims with details on these points before he could be given any deduction thereunder. On behalf of the assessee reliance has been placed upon a decision of this Court in -- *Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax*, which turned upon the interpretation of Section 2(l)(c), Income Tax Act, (Act 11 of 1922). It was held there that to bring the income from a dwelling house within the definition of "agricultural income" u/s 2(1)(c) of the Act, it was enough if it were shown that by reason of the assessee's connection with the land he required a dwelling house in that vicinity; and it was not open to the Commissioner to consider whether the particular class

of house was more or less commodious than the actual requirements of a zamindar in his position or status in life.

Section 2(1)(c) of the Income-tax Act, which was then under consideration by their Lordships, provided that agricultural income for the purposes of the Act included any income, derived from any building owned and occupied by the receiver of the rent or revenue of any such land, provided that the building was on or in the immediate vicinity of the land and was a building which the receiver of rent or revenue, by reason of his connection with the land, required as a dwelling-house or as a store-house or other out-building. Therefore, the main requirements of the section were: (i) that the building must be in the immediate vicinity of the land, and (ii) that it was a building which the receiver of rent or revenue by reason of his connection with the land, required as a dwelling-house etc. If those two conditions were fulfilled, then the income, if any, derived from such a source would fall under "agricultural income". The correctness of this decision was examined later by a Full Bench of this Court in -- *Rajendra Narayan Bhanja Deo Vs. Commissioner of Income Tax, Bihar and Orissa* where the majority of the Judges affirmed the view taken by Sir Dawson-Miller in the earlier case and reiterated the principle that where a dwelling-house was one which a zamindar required by reason of his connection with the land it was in the vicinity of the land, its annual value was entirely exempt from assessment to Income Tax.

The learned Judges overruled the contention of the Department that the exemption should relate only to so much of the building as might be needed for the purpose of collecting the rent or revenue. There is no doubt that Section 6(g) of the Act, which we are concerned to interpret in the present case, is differently worded, inasmuch as it lays down that the expenses incurred must be in connection with the maintenance of a capital asset which is required for the purpose of collecting rent due in respect of the land from which the agricultural income is derived. It is contended on behalf of the Department that according to this provision it is open to the Taxing Department to examine to what extent the maintenance of these capital assets was required for the purpose of earning agricultural income. There is undoubtedly much force in this contention, and *Prima facie* I would have been loath to extend the application of the principles underlying the decisions on which the learned Counsel for the assessee relies to the present case. I find, however, that I have been forestalled by another decision of this Court in -- *Province of Bihar Vs. Kamakhya Narayan Singh*, which is a Special Bench decision binding on us unless we choose or consider it expedient to refer the matter to a larger Bench.

The case in question turned upon the interpretation of this very section of the Agricultural Income Tax Act, viz., Section 6(g). In that case a certain sum of money was claimed by way of deduction on account of depreciation charges on 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 disallowed those claims on the findings that those employees

of the Raj who occupied the buildings were not only required for earning agricultural income but also for non-agricultural income which was more than the agricultural income, and that these offices were constructed because the assessee had been planning a new town at Padma. The Commissioner also held that the maintenance, of those buildings was required for earning both non-agricultural income as also for collection of rents and as the income from the non-agricultural source was greater than the agricultural income, he thought that on the terms of Section 6 (g) of the Agricultural Income Tax Act, the deduction could not be justified. Their Lordships did not approve the view taken by the taxing authorities on the interpretation of Clauses (g) and (i) of Section 6 of the Act.

Manohar Lall, J., who delivered the leading judgment of the Court pointed out as follows:

"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 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."

In deciding the case the learned Judges relied upon the earlier decisions reported in *Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax*, and "AIR 1929 Pat 449 (FB) (B)" which, according to them, dealt with an analogous provision in the Indian Income Tax Act, the construction whereof was helpful to the interpretation of the provisions with which we are concerned. Meredith, J. did not entirely agree with Manohar Lall J. but Shearer J. concurred in that decision. The facts of that case are almost parallel to the facts of the present case and bearing as it does upon the interpretation of Section 6(g) itself, I cannot overcome the binding effect of this decision. I may also observe, that the relevant provisions of the Agricultural Income Tax Act have since been amended and Section 6(g) has been re-cast by Act 7 of 1949 on the lines suggested by Manohar Lall, J. in the Special Bench judgment.

To take up the controversy afresh would not, therefore, serve much useful purpose, and I prefer to abide by the above decision of the Special Bench of this Court in regard to the interpretation of Section 6(g) of the Act irrespective of any inclination to the contrary. In view of that decision, it follows that the above deductions claimed by the assessee should be allowed u/s 6(g) and the other relevant sections of the Agricultural Income Tax Act already mentioned above. Points 1 to 5 are answered accordingly. It may be observed that the Taxing Department has already allowed a sum of Rs. 1,28,440/- on account of depreciation of buildings though the assessee claimed a sum of Rs. 1,91,232

under that head. As I have said above, now the entire claim has to be allowed and not merely a proportionate part of it.

6. The next question relates to the claim on account of expenses over the maintenance of 28 horses in the stables. This claim is also sought to be supported on the provisions of Section 6(g) of the Act, In the first place, horses are not capital assets. That is a short answer to the claim. In the next place, it appears from the statement of the case that some of the horses are polo ponies and no allowance can be made for the maintenance of such horses. In regard to the deduction claimed on account of expenses over the Engineering Department the Taxing Officers allowed a deduction of 20 per cent of the amount claimed because it appeared that a large number of items included under this head were clearly inadmissible. The assessee claims at least a deduction of 50 per cent under that item, but in the opinion of the Board the estimate of the Taxing Officers was correct. This is entirely a question of fact with which this Court cannot interfere. Questions 6 and 7 are, therefore, answered in the negative and against the assessee.

7. I shall now turn to the claim on account of loans to the Tikari and the Lachmipur estates which formed the subject-matter of questions 3 and 9. The facts appear to be that under some indentures the assessee was given possession of certain properties forming part of the Tikari and Lachmipur estates, respectively, and thcso properties were also charged for the repayment of loans advanced by the assessee to the proprietors of those estates. Under the terms of the documents the assessee was authorised to appropriate a part of the usufruct to- wards the payment of his debts. It was not disputed that the assessee derived substantial income from the leasehold properties, which he included in his return as assessable income, but he claimed certain sums by way of deduction because they went towards the liquidation of the principal amount of loan advanced by him. u/s 2(a) of the Act "agricultural income" has been defined as any income derived from agricultural land, and u/s 6 of the Act the agricultural income shall be deemed to be the sum realised in the previous year on that account after making the permissible deductions mentioned in that section.

In other words, agricultural income means the entire gross income derived from the agricultural land during the previous year which would be liable to be taxed except for the amount which may be allowed by way of legal deductions under the Act from the gross income. The deductions specified u/s 6 of the Act do not show that the amount appropriated by the assessee, towards the liquidation of his principal debt out of the usufruct of the property held by him, falls under any of the permissible items. On behalf of the petitioner reference has been made to clause (j) of Section 6 and Clause (b) of Section 7 of the Act. But these provisions do not help the contention because there has been no payment of interest by the assessee on account of any mortgage or on other capital charges. The learned Counsel has also relied upon some stray passages in the judgments

of this Court in -- *The State of Bihar Vs. Sir Kameshwar Singh Bahadur, and -- Province of Bihar Vs. Prithvi Chand Lal Chowdhury*, . The, facts of those cases, however, are entirely different, and I am unable to spell out anything in favour of the assessee from those decisions in spite of the assistance of the learned Counsel,

On the contrary, it seems to me that the matter is concluded by a decision of the Judicial Committee in -- (1948) 16 ITR 330 (Privy Council) . In that case it appeared that the assessee, who was a mortgagee in possession, had given a Lease back of the property to the mortgagor. In the year in question, the mortgagor paid less than the annual amount stipulated for under the lease. The assessee appropriated a part of it towards the interest due on the mortgage and the balance towards the principal. The question was whether this part of the amount which was appropriated towards interest by the mortgagee, but which was really a part of the rent payable to the mortgagee in respect of the lands admittedly used for agricultural purposes, was agricultural income, and as such exempt from Income Tax. Their Lordships of the Privy Council held that by the lease back the assessee did not cease to be a mortgagee in possession, and it was immaterial whether any part of this sum in any account as between the mortgagor and the mortgagee, was or ought to have been appropriated to the payment of principal or interest or to any other purpose.

Their Lordships proceeded to observe thus: "They therefore do not propose to analyse the payment nor to consider whether, in so far as any part of it was in respect of a principal sum, that principal sum was itself aggregate of a principal sum and interest. The salient and decisive fact is that the assessee being in possession of the mortgaged property was entitled to receive and received the rents thereof. It was conceded that if the assessee was truly a usufructuary mortgagee within the meaning of Section 57(d), T. P. Act, 1882, and in that capacity received the rent in question, it would be in his hands agricultural income and exempt from tax. But it was contended that, if the assessee, was not such a usufructuary mortgagee then, notwithstanding that he went into possession and received the rent, it was not agricultural income. For this reason learned counsel for the Commissioner was at pains to show that the mortgage in question was not a usufructuary mortgage within Section 57(d) of the Act. But in their Lordships' opinion, it is unnecessary to pursue this question. For the rent of agricultural land received by a usufructuary mortgagee is agricultural income not because he is a usufructuary mortgagee, but because, being a usufructuary mortgagee, he has gone into possession and received the rent. So also the assessee, being a mortgagee, usufructuary or other, has gone into possession and the rent that he receives is agricultural income.

The law is correctly and succinctly stated by Sir Vepa Ramesam J., in -- (*Kondi Rana*) *Athmaram Chettiar Vs. (Kondi Mana) Saraswathi Ammal and Others*, , in these words: "If the mortgagor receives it (the rent) from the tenants, it is agricultural income in hands and, when it passes from his hands, it is not.

Similarly, if the mortgagee collects it from the tenants, it is agricultural income in his hands". The view of the law thus expressed receives confirmation from the decision of the Board in the -- AIR 1935 172 (Privy Council) . That was a case of usufructuary mortgage; but the language used by Lord Macmillan in delivering the judgment of the Board is equally applicable to the present case. "The exemption", he said, "is conferred and conferred indelibly, on a particular kind of income and does not depend on the character of the recipient". And again "the result in their Lordships' opinion is to exclude "agricultural income" from the scope of the Act however or by whomsoever it may be received." Enough has been said to show that the distinction sought to be made between rent received by a mortgagee "in lieu of interest and rent received by him but applicable by him, inter alia, in satisfaction of interest cannot be maintained." It is true that the appropriation of the rent paid in that case was towards interest, and there is nothing to show that it was towards the payment of capital. But the principle of the decision is based not upon any such distinction; on the contrary, the above quotation emphatically shows that irrespective of any such consideration the income so derived by the mortgagee was held to be agricultural income. I must, therefore, hold that the Tribunal was justified in refusing to allow those deductions, and the two questions must also be therefore, answered in the negative and against the claim of the assessee. I have deliberately refrained from dealing with the terms of the lease in question because even adopting the interpretation given by the assessee that these were appropriations made towards the liquidation of his capital amount, the case of the assessee, as I have already shown, is not advanced in the least.

8. The last question relates to a claim for deduction on account of Dasturat Malikana. The Board of Agricultural Income Tax has pointed out that there was no indication of any such claim having been made before the Agricultural Income Tax Officer and even in the original grounds of appeal before the Commissioner of Agricultural Income Tax no such claim was made, though in a supplementary ground filed on the date of hearing such a claim was set out. The Commissioner, however, observed that the circumstances under which this amount was being paid had not been clearly placed before him. Reliance was also placed upon a decision of the Judicial Committee in (1948) 16 ITR 330 (Privy Council) already referred to by me when dealing with questions 8 and 9. The Board has rightly held that the case in question was clearly distinguishable, and the Malikana mentioned in that case was peculiar to the Utrala estate.

Reliance has also been placed upon a decision in -- "Pratap Singh Bahadur v. Province of Bihar AIR 1950 Pat 83 (I) where it was held that Malikana allowance paid by Government under Regulation VII of 1822 was not assessable as agricultural income inasmuch as it was not an income derived from land and the person entitled to receive it received it on account of the statutory obligation of Govt. to pay, which could not be in any sense described as rent or income derived from land. Here it has not been shown that the Dasturat Malikana claimed by the assessee was malikana paid to the assessee by Government

under Regulation VII of 1822. Indeed no such deduction was claimed until at a late stage before the Commissioner, and there were no materials before the Taxing Officers to support the claims in question. That being so, the Tribunal was justified in not accepting the assessee's claim and in sending the case back for further investigation. The Board is right in observing that apparently the assessee himself was not clear about his position in respect of this claim. The question must, therefore, be answered against the assessee and in favour of the Department.

9. The result, therefore, is that questions 1 to 5 are answered in the affirmative and in favour of the petitioner, while questions (1 to 10 are answered in the negative and in favour of the Department. The success of the petitioner being almost evenly balanced, there will be no order for costs.

Ramaswami, J.

10. I agree.