(1942) 03 PAT CK 0002

In the Patna High Court

SRI RAMCHANDRA DEV — APPELLANT

Vs

COMMISSIONER OF Income Tax. — RESPONDENT

Date of Decision : 12-03-1942

Acts Referred:
Income Tax Act, 1961 — Section 66(2), 66(3)

Citation : (1942) 10 ITR 141

Hon'ble Judges : Harries, C.J

Bench : Division Bench

Judgement

HARRIES, C. J.-This is a reference u/s 66(3), Indian Income Tax Act, made by the Commissioner of Income Tax, Bihar and Orissa.

The assessee in the case is Sri Ramchandra Dev, the Zamindar of Bodokhemidi, which is an impartible estate. The assessee has income from a number of sources, and one of the main sources is agriculture. This agricultural income is, of course, exempt from Income Tax by reason of the provision of the Indian Income Tax Act. In the accounting year in question, which ended on the 31st March 1938, the assessee was assessed to Income Tax on a sum of Rs. 4,034 which represented interest on arrears due from various mustajars. The assessee claimed that this interest formed part of his agricultural income and was not assessable to Income Tax. The taxing authorities, however, came to e conclusion that this interest on arrears was in no sense rent and could not be regarded as agricultural income. The Income Tax Officer, therefore, assessed this sum to tax, and his decision was affirmed by the Assistant Commissioner. The Commissioner in review proceedings took the same view and declined to refer the question to this Court u/s 66(2), Indian Income Tax Act. Application, however, was made to this Court, ad this Commissioner was directed u/s 66(2), Indian Income Tax Act, to state a case on the following question :-

"Whether the sum of Rs. 4,034 represents interest on rent and is agricultural income and, therefore, not assessable under the Indian Income Tax Act? "

The learned commissioner has forwarded the statement of the case to this Court and had has expressed his opinion that the question should be answered in the negative.

It appears that in the Zamindari of Bodokhemidi a large number of tenants pay produce rent. The Zamindar appears to collect cash rents direct from tenants but in the case of land let on produce rent he does not himself collect the rent. This is done by mustajars. The granting of rights to mustajars is done by auction and by subsequent execution of certain documents. The right to collect produce rent from various tenants of villages is put up to auction, and the right is given to the highest bidder. Documents are then executed by which the person granted the right agrees to pay a certain u in instalments and further agrees to interest on such sums if they are to paid on due date, By these documents the mustajars are given the right to collect the landlordss share of the produce rent and of course, to retain the same for their own use. In short the mustajar is a farmer of rents and very much in the position of a thikadar. He is given and interest in land for which he pays the Zamindar an annual sum,. The interest which he is given in the land entitles him to demand and to recover the produce rents from the tanants. The view I take of this lease is fully supported by the definitions given in Wilsons Glossary of the term "Mustajir" and "Mustajiri"."Mustjir" is defined as a farmer, a renter, one who holds lands under a proprietor at a stipulated rates; also a farmer of revenue appointed to make the collections on the pare of a Zamindar or proprietor, on condition of paying a fixed sum." "Mustajiri" is defined as renting, farming, holding in farm, settlement in farm.

A " Mastajiri lease" is, in my view, a lease which creates an interest in land. The proprietor give up his right to collect the rents from the tenants and grants the same to the mustajir in return for a fixed payment. That fixed payments is, in my view, the which the proprietor reserves under mustajir lease.

The Commissioner appears to have thought that as the rights were put up to auction what Zamindar received was under a contract and was not rent, the Commissioner appears to take the view that rent is only payable by the cultivator, that is the actual raiyat. It must be remembered that rent is always the subject-matter of a contract between the landlord and tenant. It is the subject-matter of a contract relating to land. The payment which the riyat has to make is the rent provided for in the contract. The fact that the mustjir and the Zamidar in this case entered into a contract does not prevent what is payable on that contract being regard as rent. Thikas are often granted by Zamindars, and there can be no doubt that what the thikadar pays under the thika lease to the proprietor is rent. Similarly it appears to me that what the mustajir agrees to pay to the Zamindar, by the terms of the mustajur lease is rent for the interest granted to him. The payment is an annual payment for an interest in land granted by the document. and that being so, it must be regarded as rent.

The mustajir lease provides that if this payment, which I hold is rent, is not paid punctually interest at the rate of twelve per cent. will be charged on the arrears.

The interest is, therefore, interest on arrears of rent.

The Commissioner was of opinion tat interest on arrears of rent was not rent and, therefore, could not be regarded as agricultural income. He railed upon a recent Calcutta case, Sheikh Eusuf v Jitendra Nath Roy (1924) 38 CWN 184 in which it was held that interest payable on rent either under a contract or under the law is not rent as defined in the Bengal Tenancy Act and a separate suit for interest only is not maintainable as a rent suit under the Bengal Tenancy Act. The Beach which decided that case appears to have been of opinion that a difference existed between cases in which interest in claimed with rent and cases where interest on rent alone is Tenancy Act, but it was not maintainable if interest alone was sued for. the rent, then he suit was maintainable as a rent suit under the Bengal Tenancy Act, but it was not maintainable if interest alone was used for. Even assuming that interest on arrears of rent cannot be regarded as rent under the Bengal Tenancy Act, yet that does not decide the question whether it is agricultural income as that term is defined in the Indian Income Tax Act.

The Income Tax authorities have always conceded that interest on arrears of rent playable by a raiyat is agricultural income and not taxable, and there is authority of a Special Bench of the Madras High Court for the view that such arrears are not taxable. In the case of Rajah Inuganti Rajagopala Venkata Narasimha Rayanim Bahadur Varu v. The Commissioner of Income Tax, Madras (1932) 55 mad. 830 the question arose as to whether certain interest accruing on promissory notes could be regarded as agricultural income. The Zamindar had obtained from defaulting tenants promissory notes in respect of the rent and interest thereon due at the date of the notes, and the question arose whether the interest which accrued due on these notes could be regarded as agricultural income. The Special Bench held that such interest could not be regarded as agricultural income because it was interest accruing due on a loan. By the execution of the promissory notes the arrears of rent had been converted into loans to the tenants; but it is clear from the decision that the Special Bench were of opinion that had no promissory notes been executed the interest on the arrears of rent would have been agricultural income which would not be taxable.

I can see no reason why interest on mustajiri rent should be regarded differently from interest on rent payable by a raiyat. If the latter interest has always been regard as part of a Zamindars agricultural income it appears to me that interest payable on arrears of mustajiri rent must also be so regarded. Once it is held that the annual payment fixed by the mustajiri lease is rent, then the same rules must govern interest running on arrears of such rent as apply to interest on arrears of rent paid by a cultivating tenants direct to the landlord. No distinction can be drawn between the two and that being so, I would hold that interest on arrears of mustajiri rent forms part of the Zamidars agricultural income an is therefore not taxable.

For these reason I would answer the question formulated in the affirmative. As the assessee has succeeded in this case, he is entitled to cost, which I would assess at five gold mohurs. He is also entitled to the refund of Rs. 100 deposited by him.

