Privy Council Appeal No. 26 *of* 1947

Patna Appeals Nos. 23, 25 *&* 26 *of* 1944 *&* *No.* 13 *of* 1945

Commissioner of Income Tax, Bihar and Orissa - - - - - - - - *Appellant*

v.

Raja Bahadur Kamakhaya Narayan Singh - - - *Respondent*

The Same - - - - - - - - - - - *Appellant*

v.

Sahebzada S. Zainuddin Hussain Mirza and others - - - - - - - - *Respondents*

The Same - - - - - - - - - - - *Appellant*

v.

Maharaja Bahadur Ram Ranbijaya Prasad Singh of Dumraon - - - - - - - *Respondent*

The Same - - - - - - - - - - - *Appellan*

v.

Raja Bahadur Visheshwar Singh of Rajnagar - - *Responden*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH JULY, 1948.

Present at the Hearing :

LORD UTHWATT
LORD MORTON OF HENRYTON
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD UTHWATT]

These four appeals are brought from judgments of the High Court of Judicature at Patna whereby four separate References made to that Court under Section 66 (1) of the Indian Income Tax Act, 1922, as amended, were answered in favour of the assessees the respondents to the several appeals.

All appeals raise the question whether interest on arrears of rent payable in respect of land used for agricultural purposes is exempt from income tax as being agricultural income within the definition of that phrase contained in Section 2 (1) of the Indian Income Tax Act. In the second appeal a further question is raised to which their Lordships will refer later.

Under Section 4 (3) (viii) of the Indian Income Tax Act, 1922, agricultural income is exempt from assessment to income tax. Agricultural income is defined in Section 2 of the Act as follows:—

(1) " agricultural income " means—

" (*a*) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such;

" . . . . . "

It is not necessary to state in detail the facts bearing on this first question. In each case there was included in the assessment of income made upon the assessee interest in respect of arrears of rent payable for land which was used for agricultural purposes and was either assessed to land revenue or subject to a local rate. That interest had been paid. The interest was, their Lordships understand, payable in all cases by virtue of various statutes which prescribed that interest should be payable on rent in arrears. The point put baldly is therefore " Is such interest rent or revenue derived from land? "

There is a diversity of judicial opinion as to the correct answer to this question. The High Court of Calcutta (*cf. In re Manager, Radhika Mohan Roy Ward's Estate*, A.I.R. 1941 Calcutta 443) and the High Court of Madras (*cf. Pethaperumal Chettiar* v. *Commissioner of Income Tax*, I.L.R. (1944) Madras 322) have answered this question in the negative.

The High Court of Allahabad (*cf. Sarju Bai* v. *Commissioner of Income Tax* (1947) 15 I.T.R. 137) and The High Court of Patna (*cf. Maharajdhiraja Kumari Srimati Lakshmi Daiji* v. *Commissioner of Income Tax*, [1944] 12 I.T.R. 309, and the cases here under review) have answered it in the affirmative.

This difference of opinion is not surprising for as Braund J. truly points out in *Sarju Bai* v. *Commissioner of Income Tax* (*ubi. supra*) the matter is almost one of first impression.

The observation of Braund J. has as its background the fact that none of the other provisions of the Income Tax Act throws any light on the construction or meaning of the definition. The point therefore lies within a very small compass.

The conflicting points of view are put with clarity in the judgment of Braund J. in *Sarju Bai* v. *Commissioner of Income Tax* (*ubi. supra*) at pp. 144-145 where he expresses himself as follows: —

> " The argument on the one hand is that interest payable (whether by statute or not) on arrears of rent which have already become a debt due is not referable in any way to the agricultural relationship of landlord and tenant, but is attributable solely to their character as creditor and debtor. It is said that interest is in its nature merely that commercial compensation which either the accepted practice of business or in some cases the legislature has adopted to see that a creditor does not suffer from the default of his debtor. That, it is said, has nothing whatever to do with the relationship of landlord and tenant and, therefore, is not in any way derived from the agricultural land which is the subject matter of the tenancy. That is one way of putting it. The other way of putting it is that interest on arrears of rent is something which in this case has been introduced by the United Provinces Tenancy Act as a condition of the relationship between landlord and tenant. Arguing from that, it is said that, whether or not such interest can be strictly classified as rent, it certainly can be classified as coming within the larger expression ' revenue ' which forms part of the definition of agricultural income. It will be remembered that the definition speaks of ' any rent or revenue derived from land.' Those who put it in this way say that such interest, when received, has its origin in the tenancy, because, if there had been no tenancy, there would have been no arrears of rent and if there had been no arrears of rent, there would have been no statutory interest. Following this sequence of causes, they say that it is obvious that interest in circumstances such as these must be classified as ' revenue derived from land '."

The interest clearly is not rent. Rent is a technical conception, its leading characteristic being that it is a payment in money or in kind by one person to another in respect of the grant of a right to use land. Interest payable by statute on rent in arrear is not such a payment. It is not part of the rent, nor is it an accretion to it, though it is received in respect of it.

Equally clearly the interest on rent is revenue, but in their Lordships' opinion it is not revenue derived from land. It is no doubt true that without the obligation to pay rent—and rent is obviously derived from land—there could be no arrears of rent and without arrears of rent there would be no interest. But the affirmative proposition that interest is derived from land does not emerge from this series of facts. All that emerges is that as regards the interest, land rent and non-payment of rent stand together as *causae sine quibus non*. The source from which the interest is derived has not thereby been ascertained.

The word " derived " is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition.

There is no commercial connection between the interest and the rented land and an effective source—not land—has become apparent.

These considerations supply a negative answer to the question posed, subject to an entirely different point taken by the respondents.

It was stated—and the statement was not disputed—that for a considerable period Income-tax Authorities had not treated interest on rent in arrears as taxable, and that in their Manuals published from time to time this view was openly stated. In their view such interest fell within the definition of agricultural income. The Income-tax Act 1922 had in that period been amended from time to time without a change in the definition of agricultural income. Their Lordships were asked to make the inference that the definition had thereby obtained the meaning attributed to it by the Income-tax Authorities and that the legislature must be taken to have adopted the definition in the sense in which the Income-tax Authorities had understood and applied it. The observations of Lord Macnaghten in *Pemsel's* case [1891], A.C. 531 at page 591, and of their Lordships in *Burah's* case, I.L.R. 3 Calc. 63, were relied on.

Their Lordships are unable to accept this contention, for the reason that they are unable to draw from the facts brought to their attention the inference that the legislature had by the repetition of the debated phrase adopted the meaning attributed to it by the Taxing Authorities. There is indeed no evidence that the legislature was aware of the practice, and their Lordships are not prepared to make the assumption that a practice purporting to give effect to a definition has resulted in the creation of such a generally received meaning embodying that practice as would justify the inference that the attributed meaning has been silently adopted by the legislature.

The further question raised by the second appeal may be shortly disposed of. It appears that the holder of the patni rights under the Khagra Estate was unable to pay the patni rent due to the estate for several years till the rent and interest amounted to Rs.86.918.7.0, the interest on arrears of rent amounting to Rs.21.545. The holder of the rights thereupon executed a usufructuary bond in favour of the assessees under which they were put in possession of certain agricultural property for the purpose of realising the sum due to them. The question referred by the Income Tax Tribunal was as follows:—

> " Assuming that interest on arrears of rent is taxable, whether a usufructuary mortgage bond executed by the debtor in favour of the assessee in satisfaction of such interest on arrears of rent due to him is taxable."

The question is put in general terms but their Lordships are interested only in the particular Bond which was given.

They have considered the terms of the Bond and hold the view, which they understand to be also the view of the High Court of Patna, that upon its true construction the continuance of the personal liability for the debt was recognised and affirmed. They agree therefore with the High Court that on this basis the point at issue is governed by the decision of their Lordships in *Raja Raghunandan Prasad Singh* v. *Commissioner of Income Tax*, 60 I.A. 133.

Their Lordships will accordingly advise His Majesty that these appeals be allowed and that the questions raised in appeals 1, 3 and 4 and the first question raised in appeal No. 2 be answered in the negative and that the several respondents pay the costs of the appellant in the High Court of Patna. The negative answer of the High Court to the second question raised in the second appeal will remain undisturbed. The respondents will pay the costs of the appeal to their Lordships.

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In the Privy Council

COMMISSIONER OF INCOME TAX,
BIHAR AND ORISSA

v.

RAJA BAHADUR KAMAKHAYA
NARAYAN SINGH

THE SAME

v.

SAHEBZADA S. ZAINUDDIN HUSSAIN
MIRZA AND OTHERS

THE SAME

v.

MAHARAJA BAHADUR RAM RANBIJAYA
PRASAD SINGH OF DUMRAON

THE SAME

v.

RAJA BAHADUR VISHESHWAR SINGH
OF RAJNAGAR

Consolidated Appeals

DELIVERED BY LORD UTHWATT

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