

PRIVY COUNCIL

Gopal Saran Narain Singh

Vs.

Commissioner of Income-tax, Bihar and Orissa

P.C.A.No.12 of 1935

(Lords Blanesburgh J. Russell of Killowen and Sir Lancelot Sanderson JJ.)

28.05.1935

JUDGMENT

LORD RUSSELL OF KILLOWEN J.

1. The appellant appeals from a judgment of the High Court of Judicature at Patna on a reference under Section 66(2), Income-tax Act, 1922 (hereinafter referred to as the Act). The question for decision may be stated to be whether the appellant is assessable to income-tax and super tax in respect of an annual sum of Rupees 2,40,000 payable to him during his life pursuant to a covenant contained in the indenture hereinafter mentioned. The appellant was the owner of an estate in British India known as the *Nine Annas Tekari Raj*. He had a daughter who had married a son of Rani Bhubaneshwari Kuar (hereinafter referred to as the Rani). By an indenture, dated 29th March 1930, and made between the appellant of the one part and the Rani of the other part, the appellant conveyed the greater portion of his said estate to the Rani for the valuable consideration therein appearing. The indenture recites among other facts that the appellant was absolute owner of the estate, and that, for the purpose of discharging certain of his debts and of obtaining for himself an adequate income, he had agreed with the Rani for the absolute sale and transfer to her of that portion of his said estate described in Schedule 1, in consideration of the Rani covenanting to pay the said debts (which amounted in fact to a sum of over Rs. 10,00,000) and to pay to him a sum of Rs. 4,73,063 in cash to meet the expenses of his daughter's marriage and other urgent necessities, and further covenanting to pay him annual sums during his lifetime of Rs. 2,40,000 in manner thereinafter appearing, such payment being secured by a charge upon the property thereby transferred. By the operative part of the indenture it was witnessed that in pursuance of the said agreement and in consideration of the sum of Rs. 4,73,063, paid to the appellant, and in further consideration of the covenant by the

Rani for payment to the appellant during his lifetime of the annual sum of Rs. 2,40,000 by six instalments, and also in consideration of the covenant to pay and indemnify the appellant in respect of the said debts, the appellant assigned the hereditaments therein described unto the Rani absolutely. The indenture contained a covenant by the Rani with the appellant for payment to him, during his lifetime, of the yearly sum of Rs. 2,40,000 by six equal instalments, with interest at 12 per cent per annum on any overdue instalment, and to pay the said debts and to keep the appellant indemnified against all suits, actions and proceedings whatsoever in respect of the said debts or any of them.

2. This indenture does not itself contain any charge on the estate of the annual sums covenanted to be paid ; but their Lordships were informed, and the case proceeded upon the footing that the stipulated security had been given by a separate document. The taxing authorities in assessing the appellant in respect of the year 1931-1932 included in his assessable income the following item: "Other sources, annuity, Rs. 2,40,000," being the sum received by him in pursuance of the Rani's covenant. The appellant contends that no part of this receipt should be included : (1) because, being merely an instalment of the purchase price payable on the sale of his estate, it is not an annuity but a capital sum ; alternatively (2) because even if it be an annuity it is not taxable, because it does not fall within the description of what is taxable under the Act ; and in the further alternative ; (3) because even if it would otherwise fall within such description, it is "agricultural income" and as such specifically excepted from the operation of the Act. The relevant provisions of the Act are the following :

2. In this Act unless there is anything repugnant in the subject or context,-(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 Government as such

3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals.

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in Section 6, from whatever source derived,

accruing or arising, or received in British India or deemed under the provisions of this Act to accrue, or arise, or to be received in British India. (2)....(3) This Act shall not apply to the following classes of income: . . . (viii) Agricultural income.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing namely : (i) Salaries, (ii) Interest on Securities, (iii) Property, (iv) Business, (v) Professional Earnings. (vi) Other Sources.

7. (1) The tax shall be payable by an assessee under the head 'Salaries' in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites, or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer. . . .

12. (1) The tax shall be payable by an assessee under the head 'Other Sources' in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads). (2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

3. In their Lordships' opinion it is impossible to hold that this annual payment is "agricultural income" within the meaning of the Act. It is not rent or revenue derived from land; it is money payable under a contract imposing a personal liability on the covenantor the discharge of which is secured by a charge on land. The covenantor is at liberty to make the payments out of any of her moneys, and is bound to make them whether the land is sufficiently productive or not. Their Lordships are in agreement with the opinion of the Judges in India, which upon this point was unanimous. Upon the remaining questions there has been a division of opinion among those Judges. The Chief Justice and Varma, J., were of opinion that the sum in question was not a capital sum, but was "income" within the meaning of that word as used in Section 12(1) of the Act, and therefore taxable. On the other hand Khaja Mohamad Noor, J., took the view that the transaction was a sale of the estate for a capital sum or price of an amount dependent on the duration of the appellant's life, and that each annual payment was an instalment of that capital sum and therefore not taxable as income.

4. Their Lordships find themselves in agreement with the Chief Justice and Varma, J. Indeed but for the elaborate argument addressed to the Board they might well have contented themselves with adopting the careful judgment of the Chief Justice which covers the whole ground. It is impossible, without ignoring the plain language of the indenture of 29th March 1930 to treat the annual payments as instalments of a capital sum. To say that they are part of "the price" of the sale does not make them necessarily capital payments. It is only to say that they are part of the consideration for the transfer of the property, and that consideration may well take the form of annual sums which will be income in the hands of the payee. In this indenture the intention of the appellant is made clear. He was absolute owner of the estate; he could have given it away. What he does, and what he states, in the document he wishes to do, is to part with the estate in order to get rid of his debts, and to obtain for himself an adequate income. He accordingly transfers the estate to the Rani and obtains from her in exchange (1) a covenant to pay the debts in Schedule 2, (2) a sum of cash to meet the expenses of his daughter's marriage, and (3) a covenant to pay him a life annuity. This is clearly no ordinary bargain and sale by a vendor and purchaser at arm's length, for the money consideration bears no relation to the actual value of the property. The amount ultimately payable by the purchaser depends upon the life of the vendor. It is clearly a case where the owner of the estate has exchanged a capital asset for (inter alia) a life annuity which is income in his hands. It is not a case in which he has exchanged his estate for a capital sum payable in instalments.

5. But it was argued that even though the life annuity be income, as distinct from capital, it still is not income taxable under the Act, because the words "income, profits and gains" in Section 12(1) of the Act must be construed as including only such income as constitutes, or provides a profit or gain to the recipient; i. e., that the word "income" is in some way limited by its association with the words "profits" and "gains." This being so, it is said that in view of (a) the true value of the estate (alleged to be about 2 crores of rupees) and (b) the age of the appellant (alleged to be about 47 at the date of the transaction), the annuity could never constitute or provide a "profit" or "gain" to him, and therefore cannot be "income" which is taxable under the Act. Their Lordships agree with the opinion expressed by the Chief Justice upon this point. The word "income" is not limited by the words "profits" and "gains." Anything which can properly be described as income, is taxable under the Act unless expressly exempted. In their Lordships' view the life annuity in the present case is "income" within the words used in the judgment of this Board in *Commissioner of Income-tax, Bengal v. Shaw Wallace and Co.*, viz:

6. Income, their Lordships think, in this Act, connotes a periodical monetary return 'coming in' with some sort of regularity from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. This income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as 'capital.' But capital though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

7. Here the source of the life annuity is the covenant. The life annuity is the produce of one of the items (viz., the covenant) which the appellant has taken in exchange for the estate. Reference was made before their Lordships to various decisions upon the taxing Acts of other countries, Acts which are couched in different terms and framed upon different lines. So far as those decisions had any relevance to the points under consideration, they appear to have been suitably considered and dealt with in the judgments of the Chief Justice and Varma, J. Their Lordships think it unnecessary to discuss them further. They content themselves with repeating the view expressed in the judgment of the Board above referred to that little can be gained by trying to construe an Income-tax Act of one country in the light of a decision upon the meaning of the income tax legislation of another. For the reasons above appearing this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

Appeal dismissed.

Cases Referred.

1932 PC 138=136 IC 742= 59 IA 206=59 Cal 1343 (PC) at p. 212,