ALLAHABAD HIGH COURT

Gappumal Kanhaiyalal

Vs

Commissioner of Income-Tax

(Allsop, J.,)

31.08.1944

JUDGMENT

Allsop, J.

1. A Hindu family known as Gappumal Kanhaiya Lal of Rani Mandi, Allahabad, (hereafter referred to as the assessee) was assessed to income-tax upon income derived from house property in the occupation of tenants. The assessee claimed that it was not liable to income-tax on a sum of Rs. 13,500 paid by it to the Municipality on account of house tax and water tax. Its claim was disallowed by the Income-tax Appellate Tribunal which has prepared a statement of the case and referred the following four questions to us under the provisions of Section 66 (1) of the Income-tax Act :- "(1) Whether, in determining the bona fide annual value of a property under sub-section (1) read with sub-section (2) of Section 9 of the Income-tax Act, 1922, the amount of house tax imposed by the Municipal Board of Allahabad under clause (i) of sub-section (1) of Section 128 of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under Section 149 of the latter Act should be deducted from the gross amount payable as rent by the tenant of that property.

(2) Whether the amount of house tax imposed by the Municipal Board of Allahabad under clause (i) of sub-section (1) of Section 128 of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under Section 149 of that Act should be deducted as an allowance from the bona fide annual value of the property determined under sub-section (1) read with sub-section (2) of Section 9 of the Income-tax Act, 1922, on the ground that such amount is an annual charge which is not a capital charge, to which the property is subject within the meaning of clause (iv) of sub-section (1) of Section 9 of the Income-tax Act, 1922.

(3) Whether, in determining the bona fide annual value of a property under sub-section (1) read with sub-section (2) of Section 9 of the Income-tax Act, 1922, the amount of the water tax imposed by the Municipal Board of Allahabad under clause (x) of sub-section (1) of Section 128 of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under

Section 149 of the latter Act should be deducted from the gross amount payable as rent by the tenant of that property.

(4) Whether the amount of water tax imposed by the Municipal Board of Allahabad under clause (x) of sub-section (1) of Section 128 of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under section 149 of that Act should be deducted as an allowance from the bona fide annual value of the property determined under sub-section (1) read with sub-section (2) of Section 9 of the Income-tax Act, 1922, on the ground that such amount is an annual charge, which is not a capital charge, to which the property is subject within the meaning of clause (iv) of sub-section (1) of Section 9 of the Income-tax Act, 1922."

The gist of the matter is that the assessee maintains :-

(1) That the amounts paid on account of house tax and water tax are not part of the annual value of the property within the meaning of Section 9 of the Income-tax Act;

(2) that the amounts paid on account of these taxes should be deducted from the annual value of the property under Section 9 (1) (iv) of the At as annual charges not amounting to capital charges; and (3) that the water tax is a payment for water supplied to the tenant and that the part of the rent which is paid away as water tax is not part of the landlords income but merely passes through his hands on its was from the real payer to the payee.

As the last point concerns only one of the tax is I will deal with it first. I agree with the Tribunal that the water tax is a true tax and not a payment for water supplied. The proceeds of the tax are employed in supplying water at least within certain limits of amount to the whole community. Nobody is deprived of water because he is not assessed to the tax. Mr. Kunzru for the assessee has argued that owners of premises with a water connection are assessed at a rate of 10 1/8% on the annual value, while owners of other premises are assessed at a rate of 6 3/4%, but this, in my judgment, is merely a method of assessment which does not imply that the occupier of the premises pays only for the water which he uses. The higher rate is based doubtless on the fact that a person occupying a house with a water connection has opportunities of taking greater advantage of the common supply but the amount of tax does not depend upon the amount of water used. The tax will not be reduced because the occupier prefers, for instance, to draw all his water direct from the Ganges. My conclusion is that the assessee has failed to establish his third point. On the first point Mr. Kunzru argues that we should view the term annual value from the position of the owner of the property and treat is as synonymous with advantage to him, that is, we should ignore the burden case on the tenants and consider only the actual benefit to the owner. He has referred us to the remarks made in Chunnamal v. Commissioner of Income-tax, by Tek Chand, J., although he admits that the decision in that case was overruled in Lalla Mal Samgham Lal. v. Commissioner of Income-tax. He has also drawn out attention to the provisions of Section 3 and 4 of the Act but in both sections the word total appears and I am satisfied that

income throughout the Act means gross income that is, all that comes or can be deemed to come into the hands of the assessee. The term annual value must be construed in the same sense and, indeed, if it had the meaning Mr. Kunzru would assign to it, the provisions about deductions would be quite unnecessary. I have no doubt that the annual value is the full economic rent by which I mean the rent which the owner would get after free competition between intending tenants in the open market. No questions of hose or water tax would enter into the calculations of such persons. They would proffer rates of rent on the basis of their own advantage and would not be concerned with the payments which the owner might have to make out of the rents by way of taxes. I agree with the Tribunal that the assessees first point is not a good one. On the second point the Tribunal has relied upon the decision in Lalla Mal Samgham Lal v. Commissioner of Income-tax, but as that case was decided before the provision about the deduction of annual charges was introduced into the Act it is not helpful. The Tribunals own arguments are three. The first is based on the assumption that the Legislature could not have contemplated a double deduction. "Where" says the Tribunal, "the annual value has been arrived at by deduction these taxes from the gross rent, clause (iv) of sub-section (1) of Section 9 of the Income-tax Act would still be operative and the taxes will have to be allowed out of the annual value as a charge and this would lead to a somewhat remarkable result - a double deduction. There is, therefore, something wrong about this argument." The Tribunal was referring to the argument of the assessee on this second point. As for their own argument, I fear it can only be stated in the following form :-

> "If both the contentions of the assessee are good at the same time, the Legislature must be deemed to have contemplated a double deduction; the Legislature did not contemplate a double deduction; therefore, neither of the contentions of the assessee is good."

It is clear that the conclusion does not follow from the premises. The only proposition which can validly be deducted is that both the contentions of the assessee cannot both be good at the same time. The assessee never asserted this proposition, and once it is held, as was held by the Tribunal, that the first contention was not good, the proposition cannot form the basis of an attack upon the validity of the second. A finding that the second contention was valid could not alone lead to a double deduction. The Tribunals second argument is that the word charge in Section 9 (1) (iv) of the Income-tax Act does not include inchoate and contingent charges and that the charges created on property for the payment of house tax and water tax are inchoate and contingent. These charges are created in this Province by Section 177 of the U. P. Municipalities Act, 1916, which says :

> "All sums due on account of a tax imposed on the annual value of buildings or lands or of both shall, subject to the prior payment of the land revenue (if any) due to his Majesty thereupon, be a first charge upon such buildings or lands."

The tax which has throughout been referred to as a house tax is imposed under Section 128 (1)

(i) of the U. P. Municipalities Act where it is described simply as a tax on the annual value of buildings or of both. The water tax is imposed under Section 128 (1) (x) where it is described as a water tax on the annual value of buildings or of lands or of both. It is clear, therefore, that there were statutory charges upon the property of the assessee to secure the payment of house and water tax by it. The Tribunal seems to have thought that these charges were inchoate and contingent because they might or might not arise and, it they did arise, would arise out of the assessees own default. Section 177 of the U. P. Municipalities Act does not suggest that the creation of the charges is continent upon anything except, possibly, the payment of land revenue and the provision about land revenue surely means only that anybody who seeks to enforce the charge must first pay or secure the payment of the land who seeks to enforce the charge must first pay or secure the payment of the land revenue. The Tribunal gives no reason for thinking that the charge is inchoate or contingent. As it says that the charge would arise out of the assessees own or default it possibly means that the charge is contingent on the failure of the assessee to pay the tax. If that is the meaning there has been a confusion between the creation of a charge and its enforcement and it is not clear how this particular to sale in order to recover money due to the charge holder. No charge can be enforced if the money to be recovered is no longer due because the liability to pay it has been discharged. If the taxes are paid there can naturally be no question of enforcing the charge but that does not mean that no charge was created. The only other possible meaning may perhaps be inferred from the order of the Appellate Assistant Commissioner of Income-tax who seems to have thought that the charges mentioned in Section 9 (1) (iv) of the Income-tax Act were charges to secure the payment of fixed sums whereas the house and water taxes were not fixed because they were subject to remission on the ground of vacancy. I do not find it easy to follow this argument. It may possibly be a variant of the argument addressed to us by learned counsel for the Income-tax Department that a charge within the meaning of Section 9 (1) (iv) of the Act must be a charge this is impossible to conceive of any charge which may not be varied at some future date by act of parties, decree of a court, mere passage of time, death or change of circumstances. House and water taxes may be varied by future assessments but they are normally fixed for periods of five years and the fact that they may be remitted in any year in whole or in part does not seem to me to be in any way relevant. If the idea underlying these arguments is that an annual charge must be a charge to secure the payment of the same fixed sum every year for ever then I can only say that no such charge can exist and the section is meaningless. If it is suggested merely that there must be some recurring liability, then these taxes imply such liability. In some circumstances a part or whole of the amount paid may be remitted or refunded but the liability to pay is based on the assessment and the assessment itself is not set aside. I may add that there is nothing in the section that I can see which implies that the charge must be to secure the payment of exactly the same sum each year. In the case of maintenance of a child for instance why should there be no arrangement that the allowance should increase from year to year as the child grew older and his expenditure grew greater ? What is there in the section to suggest that a charge to secure payments under such an arrangement would not be an annual charge ? I must say I can see no force in the Tribunals second argument. The third argument is that the Legislature would

specifically have mentioned municipal taxes in Section 9 of the Act if it had intended that sums paid on account of such taxes should be deducted from the annual value for purposes of assessment. It is pointed out that such taxes are mentioned in connection with deductions under Section 10. It is evident, however, that there was no need to mention charges under Section 10 which has to do with business, profession or vocation, not with property, and in fact there is no mention of charges anywhere in the section. Not all municipal taxes are charges on property. The deductions allowed in Section 10 are of sums paid in connection with the business, profession or vocation and the simplest course for the Legislature was to mention all municipal taxes together whether they were charges together whether the charges or not. In the same way in Section 9, it was simpler to mention all charges together whether they where to secure the payment of municipal taxes or other payments. I can see no necessary connection between the wording of the sections. If it can be argued that certain charges which happen to secure the payment of municipal taxes must be excluded from the meaning of the term charge under Section 9 because municipal taxes not specifically mentioned in that section, it can equally well be argued that municipal taxed which happen to be charges on property should be excluded from the meaning of the term municipal tax under Section 10 because charges are not specifically mentioned in that section. They only reason why one argument seems more plausible than the other is that the term municipal tax appears to convey a more definite meaning than the term charges though, in point of fact, the legal meaning of the latter term is sufficiently clear. It these taxes are charges this argument to exclude them is illogical. If they are not charges the argument is unnecessary. Another argument on the same lines is that land revenue is a charge on property, that the Legislature specifically mentioned it in Section 9 (1) (v) and, consequently, that the legislature must have intended to exclude municipal taxes, which are public impositions of the same nature as land revenue, because otherwise they would also have been specifically included among the permissible deductions. The fallacy in this argument is that there is an unjustifiable assumption that land revenue must constitute a charge on property. As a matter of fact, up to the present time, it may have constituted such a charge according to the various Provincial Acts under which it is imposed, but those Acts may be amended or altered at any moment and there is nothing to prevent a Legislature at any time from saying that land revenue shall not be a charge on property. In these circumstances the Central Legislature when it passed the Income-tax Act did not authorise the deduction of land revenue upon the ground that it was a charge. It authorised that deduction on that ground that land revenue was a payment made to Government on account of property and clearly intended to authorise its deduction quite irrespective of the question whether it was or was not a charge upon the property. On the other hand, it did not intend to authorised the deduction of all municipal taxes as such. It intended only to authorise the deduction of such municipal taxes as happen at any time to be charges upon the property. There was no reason, in my judgment why it should have specifically mentioned municipal taxes if any such taxes came within the general definition of charges. I suppose the underlying argument is that land revenue is a charge upon property but it cannot be the kind of charge contemplated in Section 9 (1) (iv), otherwise it would not have been separately mentioned in Section 9 (1) (v) and, by analogy, that municipal taxes cannot constitute the kind of charge contemplated in Section 9 (1) (iv). I have

already explained why I consider that this argument is fallacious. The Income-tax Act was to continue in operation for an indefinite period and the Legislature could have no certainty that land revenue would everywhere continue throughout that period to be a charge upon the land. It would, however, always be payable on account of land like the ground rent mentioned in Section 9 (1) (iv) and should, therefore, always be deducted from the annual value. For this reason it was necessary to mention it separately as a precaution against possible future changes in provincial laws. It may be suggested that the contingency that land revenue might at any time or in any place cease to be a charge on the land was remote but the existence of that contingency still falsifies the assumption that the Legislature must necessarily have meant that charges created to secure the payment of land revenue were in some way different from the charges contemplated in Section 9 (1) (iv). A charge may be created to secure the payment of ground rent and if the ground rent were a charge it could be deducted for the reason alone, but it is to be deducted in any case. Land revenue is an imposition in the nature of ground rent and that too is to be deducted whether it does or does not constitute a charge or the property. On the other hand municipal taxes are not to be deducted as such. Only those are to be deducted which happen to be annual charges on the property and charges not of a capital nature. These considerations lead me to hold that the arguments of the Tribunal are not valid. In view of the provisions of the United Provinces Municipalities Act, I suppose it cannot be argued that the house and water taxes are not charges on the property but we have still to decide whether they are annual charges not of a capital nature.

In this connection our attention has been drawn to the case of Commissioner of Income-tax, Bombay v. Mahomedbhoy I. M. Rowji. In that case two learned Judges of the Bombay High Court held that sums paid on account of a general tax levied under the City of Bombay Municipal Act (which is in all essential particulars equivalent to the house tax levied under the United Provinces Municipalities Act) should not be deducted from annual value under the seemed to have had some difficulty in assigning a meaning to the term "annual charge" but ultimately came to the conclusion, with which I respectfully agree, that it must mean a charge to secure an annual liability. Beaumont, C.J., thought that the term capital charge must mean a charge on capital and consequently held that a charge to secure the payment of the municipal tax with which he was dealing must be a capital charge. He did not explain how a charge to secure the payment of the tax could differ in this respect from any other charges to which the section could refer. Section 9 of the Income-tax Act refers only to property consisting of buildings and lands. Buildings and lands must always be capital. If capital charges mean charges on capital all charges on buildings and lands, must be capital charges. There could be no annual charges which were not capital charges and that part of the section which allows the deduction of an annual charge not being a capital charge would be meaningless. It is sound rule of construction that we should interpret a statute so as to give it some meaning and I would, therefore, hold with the greatest respect that the term capital charge cannot mean a charge on capital. If an annual charge means a charge to secure the discharge of an annual liability, I have no doubt that a capital charge means a charge to secure the discharge of a liability of a capital nature, and as I consider that a

payment of house tax or water tax would not appear in a capital account, I have no hesitation in holding that a charge to secure such payment would not be a capital charge. The learned Chief Justice also accepted the argument based on the specific inclusion of land revenue in Section 9 and of municipal taxes in Section 10, an argument with which I have already sufficiently dealt. He said :

> "It cannot, I think, be questioned that the Legislature had in mind the question whether an allowance should be made in respect of local rates or municipal taxes, and it is, to my mind, inconceivable, if they had meant of allow a deduction of that nature, that they would not have said so in express words."

It was because municipal taxes were mentioned in Section 10 that he assumed that the Legislature had the question in mind, and his assumption was doubtless justifies, but the Legislature amended the Act in order to allow a deduction in respect of charge and if particular municipal taxes were charged on the property and they alone were to be the subject of deduction I cannot see why the Legislature should have made an express and redundant mention of them. The learned Chief Justice finally said that deductions generally allowed in principle were of (a) payment necessary to preserve the property and (b) payments necessary in order to enable income to be earned or received and it was difficult to see how payments of municipal taxes came within these classes. Municipal taxes, as such, do not, of course, come within these classes and consequently no allowance is made for them in Section 9, but those particular taxes which are charged upon property come within the first class because if they are not paid, the property will be put to sale and lost. For this reason payments on account of such taxes may be deducted not on the ground that they are taxes but on the ground that they are charges. The other learned Judge, Kania, J., did not agree that a charge on immovable property to secure a monthly or annual payment was a capital charge. He found that the charges created by the City of Bombay Municipal Act were annual charges, because the amounts to be paid were liable to variation, because no charge would be created if the amounts were paid before they fell due, because the charge might not continue for a whole year and because the taxes being recoverable in half yearly instalments, if one instalment were paid, the charge for the other would be to secure a half yearly and not an annual payment. My general ground for holding that these arguments cannot be accepted is that they could be applied to all charges and, if accepted, would render the provision for the deduction of annual charges quite meaningless. I have already given reasons for thinking that a charge does not cease to be annual because the annual payment which it secures may be varied by subsequent decrees or agreements or in some other way. House and water taxes at least in the United Provinces are fixed for periods of 5 years though they may be varied after those periods by subsequent assessment. Taxes become due and the liability to pay them arise on some definite date and when they become due charges to secure their payment come into force. Payment may be made at once or arrangement may be made earlier to secure payment as soon as the taxes are due and, if that is so, the liability is immediately discharged, but the taxes must become due before they are paid, the liability must arise, before it is discharged, and, therefore,

the charge on the property must come into existence for some period however short. As the charge comes into existence every year it is an annual charge just as Christmas and Dasehra, because they happen every year, are annual festivals. If the charge arise every year it is irrelevant to consider whether it remains undischarged for a whole year. Every annual charge would normally be, or ought to be, discharged within the year. It would surely not have been the intention of the Legislature to make a special concession to those who habitually delayed for a whole year in discharging their liabilities. The last argument accepted by the learned Judge has been placed before us by learned counsel for the Income-tax Department in the form that these taxes are payable every six months and cannot, therefore, give rise to annual liabilities, the discharge of which is secured by annual charges. It is clear, however, that these taxes are assessed on annual value and are annual taxes, although it may be that they are levied at intervals of six months for the sake of convenience. Even if that was not so I should hold that there was no force in the argument. Income-tax is assessed on an annual basis. All income received during each year must be included for the basis of assessment, at whatever intervals the income may be received. In the same way in allowing deductions we should allow all payments made or all liabilities incurred during the year of assessment. If there was any doubt about the matter I should hold that this is at least a possible construction and, as we are construing a fiscal statute, that we should adopt, of all possible constructions, the one most favorable to the subject.

For these reasons I would answer the first and third questions in the negative and the second and fourth in the affirmative.

IQBAL AHMAD, C.J.

I agree.

BY THE COURT. - Under the provisions of Section 66 (5) of the Indian Income-tax Act, 1922, our decision on the points referred to us is that the first and third questions should be answered in the negative and the second and fourth in the affirmative. A copy of our judgment shall be forwarded to the Appellate Tribunal under the seal of the Court and the signature of the Registrar. The assessee shall get its costs in this Court. We fix the fee payable to counsel for the Department at Rs. 200.

Reference answered accordingly.