ANDHRA PRADESH HIGH COURT

Meenakshmamma Garu

Vs.

Commissioner of Income-tax

Case Referred No. 16 of 1955

(Subba Rao, C.J. and Viswanatha Sastri, J.)

22.02.1956

JUDGMENT

Subba Rao, C.J.

1. In compliance with the requisition of this court calling upon the Income-Tax Appellate Tribunal, Madras Bench to state a case, the following two questions were referred to this court :

> "(1) Whether the appeal to the Income-Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner was validly presented.
> (2) Whether on the facts and circumstances of the case Rs. 23,000/- and Rs. 12,000/- lump sum receipts by the petitioner as consideration for grant of mining rights for 25 and 30 years respectively are not capital receipts and should not have been assessed to Income-tax".

2. This reference relates to the assessment year 1947-48. Sri Rajah Manyam Kanakaiah, the assessee was the Zamindar of Gutala Estate in the East Godavari District. He died in 1949 leaving Meenakshamma, the widow as his legal representative. The assessee leased out his graphite mines in Singanapalle forest and Nagavaram Mutha forest to the Indian Plumbago Company, Bombay under two indentures dated 23-12-1946. The Singanapalli mine was leased for 25 years for a lump sum royalty of Rs. 12,000/- and the Nagavaram mine for 30 years for a lump sum royalty of Rs. 23,000/-. In the return of income for the relevant year, the assessee included the proportionate lease amount for one year in respect of the two mines.

3. Before the Income Tax Officer, the assessee contended that the only proportionate lease amounts for one year were taxable. But the Officer rejected that plea and held that the entire lease amount was liable to tax. On appeal, for the first time before the Appellate Assistant Commissioner, it was argued that the amounts represented the premium received by the lessor and, therefore, they were capital in nature. The Appellate Assistant Commissioner rejected the contention and held that the amounts were revenue receipts. The assessee died in 1949, but on 4-7-1951 long after his death, an appeal was filed to the Tribunal purporting to be by the assessee

himself. The memorandum of Appellate grounds was signed by one Satyanarayanamurthy as power of attorney agent of the assessee.

4. There was no indication in the memorandum of appeal that the assessee died and, indeed the verification was made in the name of the assessee himself, which ran :

> "I, Rajah Manyam Kanakaiah, Alamuru, the appellant do hereby declare that what is stated, above is true to the best of my information and belief."

and it was signed by the power of attorney agent. Even when the Tribunal pointed out that it was necessary to bring the legal representative on record, no attempt was made to correct the cause title and the appeal proceeded on the basis of the memorandum as originally presented. The Tribunal hold that the appeal was not validly presented. The Tribunal also came to the conclusion that the said amounts were loyalty received from the lesse and, therefore, liable to tax.

5. Learned Counsel contends that there was a mistake in the cause title and that the appeal was in substance presented by the legal representative herself through her power of attorney agent. Section 33, Income-tax Act governs the right of appeal from the order passed by the Appellate Assistant Commissioner. Under that section, an assessee objecting to an order passed by an Appellate Assistant Commissioner under Section 28 or Section 31 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

> "Assessee" is defined under the Act to mean a person by whom income-tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him.

Section 24-B provides that, where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died. A combined reading of these provisions indicates that a legal representative, who is liable to pay tax from and out of the estate of a deceased person, would be an assessee as defined in the Act. The widow of Sri Rajah Manyam Kanakayya, being his legal representative and therefore liable to pay the tax assessed on her husband, is an assessee within the meaning of the definition. If so, she would be entitled to file an appeal under Section 33 of the Act in her own right. Meenakshamma could have filed the appeal as the legal representative of her husband through her power of attorney agent. Presumably because it was thought that the cause title could be in the name of the original assessee, it was so drafted but, in fact, it was presented by the power of attorney agent of Meenakshmma. It is on record that the power of attorney executed by her was filed before the Tribunal and, indeed a few days thereafter, an application was filed in the name of Meenakshamma for stay of execution of the order of the Appellate Assistant Commissioner.
The said facts leave no doubt in our mind that the memorandum of appellate grounds in substance was presented by the legal representative of the original assessee and was, therefore, in order. The description was only due to a mistake and the memorandum could be treated as having been, filed by the legal representative herself. In this view, the memorandum of appeal

was duly presented to the Tribunal.

6. Coming to the merits, learned Counsel contends that the said amounts were paid to the assessee as salami or premium for parting with his capital interest in the land and, therefore, they partook of the character of capital receipts and, in support of his contention, he cited a long catena of decisions, which we would briefly notice. In *Shiva Prasad Singh v. The Crown*[1], the leases were for a period of 999 years and the total salami paid was Rs. 3,37,632. Salami was payable at the inception of each lease and was a non-recurring payment. An annual rent was reserved and royalty was also payable by the lessees on the quantity of coal extracted. On those facts, the learned Judges held that salami was really in the nature of a premium paid for granting a lease.

7. In *Commissioner of Income Tax, Bihar and Orissa v. Visweshwar Singh*[2], the assessee received salami of Rs. 1800/-. Under the document, rent calculated at the rate of Rs. 100/- per bigha was payable by the lessee year after year. On a construction of the document, the learned Judges held that it was a permanent lease and that the salami of Rs. 1800/- received by the assessee represented the price for parting with the land and was a capital receipt in the hands of the assessee. Fazl Ali, J., at p. 545, made the following remarks :

> "In my opinion, there is vital distinction between a single payment made at the time of the settlement of the land and recurring payments made during the period of its enjoyment by the lessee. The distinction is clearly recognised in S- 105, Transfer of Property Act which defines both premium and rent. In this section a lease of immoveable property is defined as a "transfer of a right to enjoy such property" and it is clearly stated that the price is called the premium and the money, share, service or other thing to be so rendered is called the rent. It is obvious that if the premium represents the whole or part of the price of the land it cannot be income."

8. The assessee in *Rani Bhubneswari Kaur V. Commissioner of Income Tax, B. and O*[3]. received Nazarana on account of the settlement of land for construction of a house during the year 1342 F.S. It was contended by the assessee that the said Nazarana was salami and, it was a capital receipt and not a revenue one. The Income-tax authorities had taken the View that the payment of salami or nazarana was in the nature of payment of rent in advance.
But the learned Judges held that the question cannot be decided as a question of law but could only be decided after a full investigation of all the facts and, therefore, referred the case back to the Commissioner under Section 66(4), Income-tax Act. At p. 558 (of 8 ITR) , the learned Judges observed :

[1]4 Pat 73 : AIR 1924 Pat 379 [3](1940) 8 ITR 550 AIR 1941 Pat 39
[2](1939). 7 ITR 536 (Pat)

> "In some cases it might be payment of rent in advance and in other cases it might well be a lump sum payment for the transfer of the leasehold interest."

9. *Kamakshya Narain Singh v. Commr. at Income-tax, E. and O*[4]., was a decision of the Judicial

Committee. There, the assessee received large payments by way of royalty under various mining leases granted for 999 years. Further, the lessee had to pay and annual sum as royalty computed at a certain rate per ton on the amount of coal raised and coke manufactured. Their Lordships held that the salami was paid for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lease and that right being a capital asset, the money paid to purchase it was payment on capital account. At p. 519 (of 11 ITR) the following observations are made.-

> "The salami has been rightly in their Lordships' opinion., treated as a capital receipt. It is a single payment made for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lease. That general right may properly be regarded a capital asset, and the money paid to purchase it may properly be held to be a payment or capital account. But the royalties are on a different footing."

After considering the English law on the subject, the Judicial Committee proceeded to state at p. 523 (of 11 ITR) :

> "The royalty is 'in substance a rent; it is the compensation which the occupier pays the landlord for that species of occupation which the contract between them allows' ..... There is therefore in their Lordships' judgment no real justification for treating the royalties as capital payments. They think that they are 'income' within the meaning of the Act, whatever may be the exact definition of that word in the Act.

But in their Lordships' judgment, the royalties here are clearly income and not capital. They are periodical payments for the continuous enjoyment of the various benefits under the leases. The actual acquisition of the property in a particular ton of coal at the moment when the lessees have cut and taken away the coal is only the final stage."

10. In *Kali Prasad Singh v. Commissioner of Income Tax, B. and O*[5]. the assessee, who was a zamindar, during the year of account, granted to a person a lease for 9 years on an annual rental of Rs. 153/- of an area of 3071 acres of land for the purpose of enabling him to extract mica therefrom. The assessee was also paid an additional sum of Rs. 4,000/- as salami for obtaining the lease. The assessee also received a sum of Rs. 351/- from another person as salami or premium for settlement of about 51 acres of fire-clay land for a period of 9 years. The question was whether the two sums of Rs. 4,000/- and Rs. 351/- were taxable as income The learned Judges of the Patna High Court held that the salami fixed was not income. At p. 476 (of 19 ITR) , the learned Judges observed :

[4](1943) 11 ITR 513
[5](1951) 19 ITR 472 AIR 1951 Pat 151

> "Prima facie, salami is not income and it is for the Income-tax authorities to
> show that there do exist facts which make the salami income .... On the contrary the indentures which are on record indicate that the salami was not in payment of advance

rent."

11. A division Bench of the Calcutta High Court in *Jyotindra Narain Sinha v. Commr. For the Board of Agricultural Income-tax, Assam*[6], ' also expressed the view that the question whether a particular receipt like salami can be regarded as income or as capital receipt cannot be answered in the abstract and that each case has to be decided on its special facts.

12. The decision in *Cossimbazar Raj Wards Estate v. Commissioner of Income Tax*[7], on which the learned Advocate for the Commissioner placed reliance, is a case where a provision was made that, in case the lessee surrendered the lease before the term had run out, he should pay the total amount of rent pa$7able for the unexpired portion of the lease. The learned Judges held that that amount was rent for the obvious reason that it represented the balance of rent for the said unexpired portion.

13. Under Section 105, Transfer of Property Act, a lease of immoveable property is a transfer of a right to enjoy such property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the so-called premium is in fact advance rent and in others rent in deferred price. It is not the form but what matters is the substance of the transaction. The nomenclature used may not be decisive or conclusive but it helps the court, having regard to the other circumstances, to ascertain the intention of the parties. In the decided cases, where the lease was for a long period and the document provided both for salami and periodical payments of rent, the Courts came to the conclusion that the initial payment was in the nature of a capital income. The decisions also have held that the meaning of the word 'royalty' is rent, though on the facts of a particular case the mere use of that word is not decisive on the question of the character, of the payment. The intention of the parties has to be ascertained on the facts of each case having regard to the aforesaid tests.

[6](1953) 24 ITR 158 AIR 1954 Cal 555
[7](1946) 14 ITR 377 : AIR 1947 Cal 87

14. Coming to the present documents we do not see much difficulty in ascertaining the intention of the parties. The lease deed in question are given as Annexures-A-1 and A-2 to the statement of facts submitted by the Tribunal. Annexure A-1 was the mining lease in respect of Singanapalle forest. Under clause 3 a sum of Rs. 12,000/- in a lump-sum had been used as royalty for the whole period of the lease and this amount had been paid to the lessor on the 19th day of November 1943. The second document was the mining lease in regard to Nagavaram forest. Under cl. 3, a sum of Rs. 23,000/- in lumpsum had been fixed as royalty for the whole period of 25 years and this amount had been paid to the lessor on 19-11-1946. The first lease was only a

renewal of an earlier lease with the same lessees in the year 1941. The lessor and the lessees 'were persons conversant with the terms under which the leases of the mines were given. With that knowledge, when they used the word royalty, which term has the recognized meaning of rent for the occupation of working out of the mines, prima facie, it must be held that the word was used in the accepted sense of the term. Further, the words "lumpsum royalty" used in the preamble and the words used in clause 3 namely "Rs. 12,000/- in a lumpsum has been fixed as royalty" indicate that it is a consolidated advance payment of the amounts which would otherwise be periodically paid for the occupation of the mines. The words "royalty for the whole period of the lease" in clause 3 dispel any ambiguity, for those words indicate that what was payable for parts of the term of the lease was consolidated for convenience.
Further, the lease was not for a long period as in the other cases discussed above when it could reasonably be inferred that the lessor parted with his capital interest in the leased property. Here, one lease was for 30 years and the other for 25 years. The lumpsum royalty paid would represent a reasonable yearly rent for the occupation of the mines, viz., Rs. 766-10-8 for the Nagavaram, mine and Rs. 480/- for the Singanapalle mine. The assesses himself understood the payment as a taxable income for in his return of income for the relevant year 1947-48 he included the proportionate lease amounts for one year in respect of the two mines. We therefore, agree with the Tribunal in holding that the amounts in question represented the revenue receipts and were not proceeds of the capital interest parted with by the lessor.

15. We answer the first question in the affirmative and the second question in the negative. The applicant will pay the costs of the respondent, Advocate's fee Rs. 250/-.
Answered accordingly.