

# CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

All India Tea & Trading Co. Ltd

(S Deb, C.J. C Banerji, .)

12.09.1977

## JUDGMENT

**Deb, J.**

1. This is a reference under Section 66(2) of the Indian Income-tax Act, 1922. The assessee is a company having a tea estate in Assam. The relevant assessment year is 1958-59.

2. The Assam Legislature passed the Assam Land (Requisition and Acquisition) Act, 1948, in order to accommodate the refugees and other landless persons. Section 3 of that Act provides for requisitioning lands. Under Section 4 the requisitioned land may be used or dealt with in such manner as may seem expedient to the State Government. The land can also be acquired by the State Government after the necessary notice. Compensation for acquisition and requisition was payable under Section 7. Section 7(3) provides that where any land is requisitioned under Section 3, every person interested in such land is to be paid such compensation as might be agreed upon in writing between the person and the Collector and any damage done during the period of requisition. Under Section 7(4), in the case of land, included in any grant or settlement made for special cultivation or other purposes, which is lying fallow or uncultivated and which is requisitioned for the purpose of cultivation, the compensation payable under Clause (a) of Sub-section (3) shall in no case be more than double the annual land revenue. Rest of the provisions of the Act need not be referred to.

3. The lands of the assessee were in Singrimari and were requisitioned under Section 3(1) of the aforesaid Act in January and May, 1949. The assessee got Rs. 1,24,638 as compensation.

4. The Income-tax Officer included the aforesaid amounts under the head " Other sources " by rejecting the claims of the assessee that it was exempt from taxation as it was agricultural income.

5. In appeal, the Appellate Assistant Commissioner found that the assessee was using the requisitioned lands for agricultural purposes at the time of requisition and also before it. He, therefore, held that compensation paid was agricultural income.

6. The department filed appeal before the Tribunal. The facts found by the Tribunal may now be briefly stated. The assessee was using the requisitioned land for agricultural purposes in the

accounting year and also in the earlier years. Those lands were under actual cultivation when they were requisitioned. Compensation was paid for requisitioning the lands. After requisition, the Government of Assam gave those lands to the refugees who also cultivated those lands.

7. In view of those facts found by the Tribunal, it sustained the order under appeal. The Commissioner of Income-tax raised the following question under Section 66(1) of the Indian Income-tax Act, 1922 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 1,24,638 was derived from land used for agricultural purposes and accordingly exempt from tax ? "

8. The Tribunal rejected the application and thereafter a Division Bench of this court, acting under Section 66(2) of the Act, rejected the first part of the aforesaid question and made the rule absolute on the second part of the question by refraining it as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a sum of Rs. 1,24,638 was exempt from tax ? "

9. No appeal has been filed by the Commissioner to the Supreme Court from the order of the Division Bench rejecting the first part of the aforesaid question. In these circumstances, Mr, B.L. Pal, learned counsel for the revenue, rightly says that the findings of the Tribunal that the assessee was using the requisitioned lands for agricultural purposes at the time of their requisition and also in the earlier years and that those lands were actually under cultivation at the time of such requisition are binding on the Commissioner. He also rightly admits that the finding of the Tribunal, viz., that the refugees were cultivating those lands after the Government of Assam gave those lands to them is also binding on the revenue.

10. Mr. Pal further rightly admits that compensation is revenue. He, however, argues, that the aforesaid revenue was not derived from the requisitioned lands inasmuch as, according to him, it was paid by the Government of Assam to the assessee for discharging its statutory obligation under Section 7(3) of the Assam Land (Requisition and Acquisition) Act, 1948.

11. In substance his argument is that, though this compensation is revenue, it is not agricultural income inasmuch as its immediate source is Section 7(3) of the aforesaid Act and not the lands.

12. We will now deal with the cases cited by him in support of his aforesaid contentions. In the case of *Commissioner of Income-tax v. Kamakhya Narayan Singh*<sup>1</sup> the rent due to the assessee was not paid and the arrears of interest on the unpaid rents were realised by the assessee. Question was whether the arrears of rent were agricultural income. The Privy Council held that the interest is not rent and rent is not land. At page 328 the Privy Council says thus :

" Equally clearly the interest on rent is revenue, but.....it is not revenue derived from land.....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."

13. In that view of the matter, it was held by the Privy Council that the arrears of rent were not agricultural income within the meaning of Section 2(1) of the Indian Income-tax Act, 1922.

14. In other words, the decision of the Privy Council is that an income which is derived from an agricultural income cannot be an agricultural income, for its immediate source is not the land but the agricultural income itself.

15. In the case of *Pratap Singh v. Province of Bihar*<sup>2</sup>, malikana was paid not as compensation for deprivation of the land of the dispossessed proprietor " but merely as a subsistence or compassionate allowance for himself and his family " and, therefore, it was held that malikana was neither a rent nor an income from an agricultural land under the provisions of the Bihar Agricultural Income-tax Act, 1938. In *Mrs. Bacha F. Guzdar v. Commissioner of Income-tax*, the question was whether the dividend realised by the assessee from an agricultural company was an agricultural income in the hands of the assessee. At page 4 of the report, the Supreme Court observed that " agricultural income " as defined in the 1922 Act is obviously intended to refer to the revenue received by direct association with the land which is used for agricultural purposes and not by indirectly extending it to cases where the revenue or part thereof changes hands either by way of distribution of dividends or otherwise.

16. In *Suryanarayana Murty v. Commissioner of Income-tax*<sup>3</sup> the land ceased to be the agricultural land in the accounting year and, therefore, it was held by the Andhra Pradesh High Court that the receipt was not an agricultural income.

17. In *Commissioner of Income-tax v. K. S. Imam Saheb*<sup>4</sup> the assessee had a right to pluck coconuts from the lands of the proprietor, but the lands were not subject to any lease in favour of the assessee. The question was whether the income derived by the assessee from selling the coconuts was an agricultural income. It was held by the Madras High Court that there was no nexus between the income, land and agricultural operations and, therefore, the realisation was not an agricultural income.

18. The relevant facts in the case of *Commissioner of Income-tax v. Kunwar Trivikram Narain Singh* were as follows : Many years ago, Babu Ausara Singh was a jagirdar of certain parganas in the district of Benaras. There was a dispute between him and the zamindars which ended in 1837 by a compromise between the British Government and the then jagirdar, Babu Har Narain Singh, whereby the British Government granted a pension to Babu Har Narain Singh and his heirs in perpetuity calculated on the basis of one-fourth of the revenue of the jagirs. By this agreement the revenue or local collections of jagirs became payable by the zamindars direct to the Government and by the grant of the pension, Babu Har Narain Singh and his successors no longer remained the proprietors of the parganas or the jagirs and became entitled merely to a pension. During the relevant accounting year the assessee received a certain amount of the aforesaid pension and; the question was whether it was an agricultural income within the meaning of Section 2(1) of the Indian Income-tax Act, 1922, in the hands of the assessee.

19. In view of the agreement of 1837, it was held by the Supreme Court that the assessee had no interest in the land or in the land revenue payable in respect thereof. After discussing the decision

of the Privy Council and also its earlier decisions at page 34 of the report, the Supreme Court says thus :

" It follows from the decisions of the Privy Council and the judgments of this court cited above that if it is held in this case that the source of the allowance or pension is the arrangement arrived at in 1837, then the income cannot be held to be derived from land within the meaning of the definition in Section 2(1)(a) of the Act. It seems to us that in this case the source of income is clearly the arrangement arrived at in 1837 and, therefore, it is not agricultural income as defined in the Act."

20. The principles that emerge from the aforesaid decisions of the Privy Council and the Supreme Court which are relevant for our purposes may now be enumerated as follows :

- (i) Rent or revenue which is directly derived from- any land which is used for agricultural purposes will be an agricultural income for the purposes of income-tax ;
- (ii) Revenue which is derived must also be directly and not indirectly associated with the land which is used for agricultural purposes before it can be said to be an agricultural income ; and
- (iii) The effective source of the receipt is the decisive factor.

21. To us it appears that under the provisions of the Assam Land (Requisition & Acquisition) Act, 1948, the payment of compensation is directly associated with the requisitioned land itself. Requisition and compensation go together under the Act. They are so inter-linked or interwoven that one cannot be dissected from the other. It also appears to us that the source of compensation is the land itself which is requisitioned under the Act. Though it is a statutory liability, none the less it is a liability which arises directly from the requisition of the land itself.

22. The requisitioned lands were used by the assessee for agricultural purposes in the accounting year and also in the earlier years. Those lands were under cultivation at the time of their requisition by the Government of Assam. The compensation was paid for the requisitioned lands which were used for agricultural purposes by the assessee. Those lands were also cultivated by the refugees after they were given to them by the State Government after requisition.

23. In the premises, the conditions laid down by the highest authorities and enumerated above are fulfilled in the instant case before us and, therefore, the contentions of Mr. Pal must fail. We, accordingly, answer the question in the affirmative and in favour of the assessee. There will be no order as to costs.

**C.K. Banerji, J.**

24. I agree.

Cases Referred.

- 1[1948] 16 ITR 325 (PC)
- 2[1949] 17 ITR 202 (Pat)
- 3[1961] 42 ITR .83 (AP)

4[1969] 71 ITR 742 (Mad)