

**ORISSA HIGH COURT**

S.M. Bose

Vs

Board of Revenue

S.J.C. No. 188 of 1951

(Panigrahi and Mohapatra, JJ.)

11.02.1953

**JUDGMENT**

**Mohapatra, J.**

1. This is a reference made by the Board of Revenue, Orissa under the provisions of Section 29, Orissa Agricultural Income-tax Act. The question referred to us is

"whether on the facts of the case as recorded above, the salami of Rs.20,768/- received by the petitioner Sri S.M. Bose, Proprietor of Rutton Estate, Tulsipur, Cuttack towards settlement of agricultural lands constitutes agricultural income or capital gains".

The question arises under the following facts; The petitioner realized the above sum of Rs.20,768/- as salami by settling tenants in respect of certain Nijchas, Nij-jote, Anabadi and Nilam-Kharid lands of the Rutton Estate, Tulsipur, Cuttack. The petitioner's case is that settlements are oral and the tenants have obtained occupancy right by virtue of the settlements. The rents have been fixed by an enquiry in accordance with the rents paid in respect of similar lands in the vicinity. Indeed, the rent is not the village rent. The salamis are fixed by auction. In the statements submitted to us, we get it, there is no evidence that the present rent of settlement should be higher than the rent of similar lands in the neighborhood. Barring any such evidence, prima facie, the rent fixed should be taken as fair rent and presumption of merger of rent in the salami goes. It is to be mentioned, the evidence in the case was entirely the returns and affidavits filed by the petitioner. No further enquiry has been held and the facts stated in the statements submitted by the Board of Revenue on 17-10-51, do not appear to be disputed. It is to be examined under the facts appearing as above in the statements of the Board of Revenue, whether the salami of Rs.20,000/- and odd is to be deemed as agricultural income as defined under the provisions of the Act. The learned Advocate appearing on behalf of the Agricultural Income-tax authorities relies upon Section 2 clause (a)(1) for the purpose of definition of the words "agricultural income". It runs as follows:

"(1) any rent or income derived from land which is used for agricultural purposes, and is

either assessed to land revenue in the Province of Orissa or subject to a local cess or rate assessed and collected by officers of the Crown as such;" He emphasises upon the words "income derived from land which is used for agricultural purposes".

The word "income", it is true is a word very difficult and perhaps not possible to define in any precise and general formula. Its definition has, however, been approached in many decisions of their Lordships in Privy Council. I cannot put in better language than that of Sir George Lowndes in the case - '*Commissioner of Income Tax, Bengal v. Shaw Wallace and Co*'.', His definition was:

"Income, their Lordships think, in this Act connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessary 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. Thus 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."

This definition was followed again by Lord Russell in the case of - '*Gopal Saran Narain Singh v. Commissioner of Income Tax, B. and O*'.'. The matter again came for discussion before the same Board in a case coming from Patna in the famous 'Ramgarh Case, - '*Kamakshya Narain Singh v. Commissioner of Income Tax, B. and O*'.'. The definition was very slightly modified in that decision to the extent that a reference to the analogy of fruit, or increase to sowing or reaping or periodical harvests is not very happy. But nevertheless, the position is absolutely clear that income connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. From this point of view, a single nonrecurring payment by way of salami cannot ordinarily be taken to be an income.

2. Whether salami is income within the meaning of the Income-tax Act or Agricultural Income-tax Act has come for determination in several cases before their Lordships of the Patna High Court and it is the consistent view taken by Patna High Court in many decisions that salami paid to the landlord at the time of settlement of agricultural land cannot be regarded as income as a matter of law. Where salami can be regarded as payment of rent in advance it can rightly be regarded as income. Where, however, salami could not be regarded as a payment of rent in advance, it could not be regarded as income and would, therefore not be taxable. Prima facie salami is not income and it is for the Income-tax authorities to show that there do exist facts which would make the salami income. We would only quote the precedent in the case - '*Province of Bihar v. Pratap Udai Nath Sahi Deo*'<sup>4</sup>, which is a case under the Bihar Agricultural Income-tax Act. Harries, C.J., after a review of all the decisions laid down the position of law as indicated above. It, therefore, appears to be settled law that it cannot be laid down as a hard and fast rule that salami can in no case be taxable. The question in each case would depend upon the facts in that case, the criterion being whether in that particular case the premium received is a part of the rental paid in advance. If not, then the single non-recurring payment salami cannot be taken to be a taxable income. The same view has also been taken in the recent decision of the Pat. High Court in the case -

*'Commissioner of Income Tax B and O. v. Kamakshya Narain Singh<sup>5</sup>'*, Now, as in the present case, it has been found as a fact that "the rent fixed should be taken as a fair rent and presumption of merger of rent in the salami goes" we would answer the question that the salami of Rs.20,768/- received by the petitioner Shri. S.M. Bose towards settlement of agricultural lands does not constitute agricultural income and as such, is not taxable and is capital receipt. The reference is disposed of accordingly. Hearing fee is assessed at Rs.100/-.

**Panigrahi, J.**

3. I agree with the order proposed by my learned brother and would like to add a few words.

4. The petitioner settled by auction the occupancy right in certain Nij-chas, Nij-jote, Anabadi and Nilam-Kharid lands in his estate. The purchase money fetched at the auction was entered in his accounts as salami, and an annual rent was fixed for the different plots of land at varying rates. The salami does not represent the market-value of the land in the area and the finding of fact is that it is in fact much lower than the value of similar lands in the neighborhood. The Assistant Collector of Agricultural Income-tax inferred from this fact that as the salami is low it must be presumed that it represented a part of the annual rent commuted into cash payment. In his view, therefore, it constitutes agricultural income and is liable to be taxed. The Board of Revenue came to a contrary conclusion, on the facts, and held that as the lands were at the absolute disposal of the landlord and the occupancy right in them was transferred to the bidders at the auction the money realized at the auction was in the nature of a capital receipt and not income from land. The Board also held that the rent fixed for the land was prima facie a fair rent and that it could not be legitimately inferred whether any part of the rent went into the fixation of the salami. On these findings the following reference has been made to this Court:

"Whether on the facts of the case as recorded above the salami of Rs.20,768/-/- received by the petitioner Sri S.M. Bose, proprietor of Rattan Estate, Tulsipur, Cuttack, during his settlement of agricultural lands, constitutes agricultural income or capital gains".

5. The grievance of the petitioner is that the money realised at the auction of the lands is the consideration paid for transfer of the landlord's right to use the land for agricultural purposes, and is in the nature of a capital receipt. It does not, it is argued, represent the rent, or a portion of the rent, capitalized into a lump sum payment. In fact, it is not related, nor is it relatable to, the assessment on the land which is fixed on different considerations, and is comparable to the prevailing rate. It is conceded by the opposite party, that it does not represent the market value of the land either. The

contention for the opposite party is that the process through which the money is obtained can be repeated any number of times, such as on failure of payment of rent, and the receipt is therefore in the nature of a periodical return.

6. The contention of the petitioner is supported by an array of cases but the point for decision turns upon the exact connotation of the word 'income'. The Agricultural Income-Tax Act does not define the word 'income'; nor does it define the word 'salami'. The Assessing Officer referred to the notes for guidance in filling up the form; of return prescribed under the Act which lays down that salami paid or premium received by landlords for settling lands or wastelands or

abandoned holdings for agricultural purposes, and salami or premium or fee paid to a landlord for recognition of transfer of a holding from one tenant to another are in the nature of income derived from land. The latter part of the direction refers to what is called mutation fee; and whether it is in the nature of agricultural income or not does not fall for decision in this case. The first part of the direction, namely, salami received by a landlord for settling lands or wastelands or abandoned holdings for agricultural purposes may, in certain cases, be regarded as income derived from lands, but in what cases it may amount to 'income' will depend upon the facts of each case. If, for instance, it is a payment of rent or a portion of the rent made in advance, it may be regarded as 'income' but where it has no relation to rent and merely represents the price of a right to enjoy the land it is in the nature of a premium or a salami. Income is something which flows from the property as distinct from something received in lieu of the property, either in whole or in part. In - 'AIR 1932 PC 138', Sir George Lowndes observed that:

"income connotes a periodical monetary return 'coming in' with some sort of regularity or expected 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. Thus, 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' ".

In the later case of the Judicial Committee - 'AIR 1935 PC 143, the appellant conveyed the greater portion of his estate to Rani Bhubaneswari in consideration of the Rani covenanting to pay him an annuity during his lifetime which was a charge upon the property transferred. Their Lordships held:

"This annual payment is not agricultural income as it was not rent or revenue derived from land. It was money payable under a contract imposing a personal liability on the covenantor the discharge of which is secured by a charge on the land".

The point again came up for decision before their Lordships of the Privy Council in - 'AIR 1943 PC 153'. That was a case of a mining lease and the point for decision was whether the salami which was exigible by the lessor under the lease was income liable to be taxed. In their Lordships' opinion the salami 'had been rightly treated as a capital receipt' The reason given by the Board was that it is a single payment made for the acquisition of the right of the lessees to enjoy the benefit's granted to them by the lease. That general Tigt may properly be regarded as a capital asset and the, money paid to purchase it may properly be held to be a payment on capital account. There can therefore be no doubt that an insolated payment made for the acquisition of the right to use the land for agricultural purposes and enjoy the benefits accruing from the land, cannot, in any sense, constitute income. The petitioner's contention is, therefore, well-founded and must prevail.

Answer accordingly.

Cases Referred.

<sup>1</sup>AIR 1932 PC 138

<sup>2</sup> AIR 1935 PC 143

<sup>3</sup> AIR 1943 PC 153

<sup>4</sup> AIR 1941 Pat 28 (SB)

<sup>5</sup> AIR 1947 Pat 252