

PATNA HIGH COURT

Sri Sri Raja Shiva Prasad Singh

Vs

Emperor

(Dawson Miller, C.J. Foster, J.)

03.07.1924

JUDGMENT

Dawson Miller, C.J.

1. These two cases were heard together as they involve to a large extent the determination of the same questions. In Case No. 66 of 1923 the petitioner is the Raja of Jharia. He was assessed to income-tax for the year 1922-23 upon a total income of Rs. 8,97,111. This included (1) a sum of Rs. 3,37,632 received by the assessee during the year by way of salami or premium for the grant of leases of the mineral rights on a portion of his estate, (2) Rs. 3,84,800 for royalties paid by the lessees of mining leases upon the coal raised, and, (3) a sum of Rs. 7,574 representing annuities paid to the widows of the late Raja under his Will and charged upon the estate.

2. The assessee objected that the amounts entered under the above three heads were not assessable to income-tax and applied to the Court on the 2nd August last to require the Commissioner to state a case and refer it to the High Court for decision under Section 66 of the Income Tax Act, 1922. The Court granted the application and the matter has now come before us for decision upon a case slated by the Commissioner of Income-tax upon the 15th November last.

3. Some difficulty arises at the outset as the facts have not been very fully or clearly stated by the Commissioner. We are not told in the case stated anything about the nature of the leases under which the salami is payable except that they are leases of coal mining rights for a term of years. The number of the leases the amount of the salami in each case making up the total sum of Rs. 3,37,632 and the duration of the term are not stated nor are any other provisions of the leases referred to Again with regard to the annuities no very definite findings of fact are arrived at by the Commissioner. He refers to the Will of the late Raja but does not state the terms of the Will under which the annuities are granted. He assumes that the estate is impartible and passed by succession according to the law of primogeniture but in a later passage he treats the case as one in which the devolution is governed not by inheritance but by survivorship and he questions the

right of the late Raja to dispose of the estate by Will in so far as it has granted annuities to his widows for their maintenance, if such grants should exceed that which they would otherwise be entitled to under Hindu Law. The case stated is in fact an argumentative expression of his opinion as to the law to be applied in the course of which certain facts incidentally appear. We desire to take this opportunity of stating for the guidance of the Income Tax Commissioner in future that whilst it is quite proper for him to state his opinion upon the questions involved, it is his first duty to state clearly and fully the material facts admitted or proved in evidence before him. To adopt any other course must, in most cases, result in embarrassment and uncertainty when the matter comes before the Court for its decision, the Court being bound by the findings of fact arrived at. The result in the present instance is that we have had to consider some of the documents and the verbal evidence for ourselves and with the help of admissions by Counsel for the parties arrive at certain conclusions of fact. Otherwise we should have felt bound to return the case for further findings.

4. It appears that the total salami amounting to Rs. 3,37,632 is made up of seven different sums payable to the proprietor by the lessees under seven instruments of lease, The leases which are for all material purposes in similar terms are for a period of 999 years. The salami is payable at the inception of the lease and is a non-recurring payment; An annual rent is reserved and royalty is also payable by the lessees on the quantity of coal extracted. It would seem that the salami in the present case is really in the nature of a premium paid for granting a lease. In other words it is the purchase price of a leasehold interest and it is contended on behalf of the assessee that it represents not income but capital and that the transaction is merely the transference of the corpus from one form of security into another, from minerals or mineral rights into cash. Section 4, Clause (3) of the Income Tax Act, 1922 provides that the Act shall not apply to certain classes of income including "any receipts, not being receipts, arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee." Now these salamis are in no sense receipts arising from business or the exercise of a profession, vocation or occupation but it is urged on behalf of the Crown that they may recur for the leases may fall in by forfeiture and in any event they are for a definite term. The case of *Birendra Kishore Manikya v. Secretary of State for India*¹ has been relied on. There the question was whether certain receipts including, inter alia, (a) salami paid by transferees of occupancy holdings for obtaining the landlord's consent to the transfer, and, (b) patta salami, a fee generally of one rupee, paid by the tenant on settlement of waste lands or abandoned holdings were assessable to income-tax. The real question for determination in that case was whether the sums so paid were agricultural income which is exempt from income-tax under the Act. It does not appear to have been argued that they were not income at all. The Court held that the first of the above classes of salami was not agricultural income within the meaning of Sections 2 and 4 of the Income Tax Act, 1918 but that the second

class was exempt, from tax as it might reasonably be regarded as rent or revenue derived from land. It by no means follows, however, that because a particular class of payment included under the term salami is regarded as the income of the recipient, every payment which may be popularly described as salami must be Income. Small payments recurring from time to time in connection with the same holding may perhaps be legitimately regarded as income in most cases, although I am not prepared to subscribe to the proposition which might be deduced from the case cited that the capitalised value of the rent paid in a lump sum is in all cases to be regarded as income. The fees payable on transfer of holdings may perhaps bear some analogy to certain classes of fines payable to the lord of the manor in England on the enfranchisement of copy holds: (*Earl Cowley v. Wellesley*² or those paid to the landlord on the grant of a fresh lease under a covenant for perpetual renewal: *Brigstocke v. Brigstocke*³ or under the power to renew contained in the settlement: *Simpson v. Bathurst*⁴ These are now regarded as casual profits to which under the Settled Land Acts the tenant for life is entitled. The distinction between capital and income is one of importance in the case of settled lands in England and the principles there followed are of some assistance but not necessarily conclusive, and it may be mentioned that under these Acts a fine received on the grant of a new lease under statutory powers is treated as capital money arising under the Act and not as casual profits to which the tenant for life is entitled as in the case of renewals under a power conferred by the Settlement. Moreover in the case of mining leases a part of the rent must be set aside and applied as capital money unless a contrary intention is expressed in the settlement. It would appear that under the Settled Land Acts except in so far as they make such receipts income to which the tenant for life is entitled they are treated as capital.

5. Royalties paid to the lessor although they may be regarded in one sense as instalments of the purchase price of the minerals forming part of the land are treated in England as income and have been so treated in this Court. See In the matter of *Raja Jyoti Prasad Singh Deo*⁵ They are nonetheless income merely because they are paid for rights the exercise of which involves a waste of the capital. As was pointed out by Lord Halsbury, L.C., in *The Secretary of State for India v. Sir Andrew Scoble*⁶ "where you are dealing with income-tax upon a rent derived from coal (and the same would apply to royalties) you are in truth taxing that which is capital in this sense that it is a purchase of the coal and not a mere rent," but he adds "The income-tax is not and cannot be, I suppose from the nature of things, cast upon absolutely logical lines." At the same time there is a vast difference between a sum paid once for all for the lease of mineral rights and a rent or royalty paid annually to the lessor. The lessor in this case who holds an unfettered right of disposal would appear; in granting these leases to have had two objects in view which are distinguishable. In so far as rent and royalty are reserved, he is founding an annual increment to the income of the Raj for himself and his successors but with regard to salami it is the price he demands for parting with his direct enjoyment of the property by himself

and his successors for a period of 999 years. He is parting with the capital to persons who, whilst not purchasers of the fee simple, are undoubtedly purchasers of a large interest therein. The purchase price is presumably not based upon the estimated out-turn but is paid in exchange for the long term transferred. Possibly it may be objected that the distinction is one of degree rather than of kind, recurring payments at short periods being treated as income and a single payment of a similar kind covering a long period being treated as capital, but after all this is a distinction acknowledged in Section 4 of the Act itself and, as has been observed, the Income Tax Acts are not cast upon absolutely logical lines. Nor does there appear to be any reason why we should extend the exception made in the case of rent and royalty to the case of a non-recurring payment made to cover a long period.

6. In so far as the leases in question form transactions by which a lump sum is paid under the name of salami for the granting of the lease I consider that it is more in the nature of an out and out sale of property and that the sum so received by the lessor is in no sense income within the meaning of the Indian Income Tax Act. In so far as the leases reserve rent or royalty the sums so paid are in my opinion income.

7. It was also urged that the question could not be judged by a priori standards but that it should first be ascertained how the money was in fact treated by the assessee, that is whether it was reinvested as capital or spent as income. The short answer to this argument would appear to be that the assessee having absolute control over his estate was under no obligation to invest the capital for the benefit of those who might succeed him. Imprudent or embarrassed persons might spend their capital as they would their income, but it is nonetheless capital and an enquiry on these lines would be fruitless.

8. With regard to the annuities payable to the widows of the late Raja under his Will the facts as I have stated do not fully appear from the case presented for our opinion. The Will, however, is on the record. It is dated the 27th August 1915. It recites that the entire Pargannas Jharia and Jaynagar in Manbhumi are the ancestral zemindari of the testator and that he has other immoveable properties in the District of Manbhumi and elsewhere. These he leaves to whoever may be his heir at his death. Of his cash and moveable properties including diamonds and precious stones a 6-annas share is to appertain to his zemindari and to go to his heir. The remaining 10 annas share he leaves to his wives who shall survive him in equal shares for their absolute use. The Will then provides as follows: Each of my wives shall get a maintenance of Rs. 3,600 per annum and he who will inherit and be in possession of the zemindari at any time shall be bound to pay to each of my wives maintenance at the above rate, i.e., at the rate of Rs. 3,600 per annum and he shall pay the said amount of maintenance in 12 equal instalments, i.e., Rs. 300 every month. If the amount be not paid according to the instalments, then he shall pay interest at the rate of Re. 1 per cent. per mensem, and the zemindari left by me shall remain charged for the

amount of maintenance and interest for default, i.e., my wives shall be competent to sue, individually or jointly, for the amount of maintenance with interest which will be due to them respectively and realize the same by selling the property left by me.

9. The assessee contends that the sums paid by him as maintenance under the above terms of the Will should be deducted from his assessable income. These sums are payable out of the income of the zemindari which includes in addition to the taxable income agricultural income which is immune from tax and which admittedly is much more than sufficient to pay the maintenance. It is clear that on the facts disclosed the assessee has made out no case for deducting the whole of this sum from his taxable income nor has he shown how much is charged thereon. The maintenance granted to the widows is charged upon the whole zemindari and to that extent it is the income of the widows. The income of the zemindari, however, is that of the assessee subject to the charge. This he may pay either from the agricultural or the non-agricultural income and so fulfil the obligation cast upon him, but there is no evidence from which we can say how much should be charged to agricultural income and how much to the taxable income. The agricultural income has not been disclosed and although I am not prepared to say that no portion could be properly deducted from the taxable income if proper materials were forthcoming I consider that there is no evidence which would entitle us to direct any reduction on the taxable income of the assessee in the present case.

10. It was argued that the widows were entitled to be maintained in any case out of the income of the estate and, therefore, the fact that maintenance was granted to them under their husband's Will could make no difference to the assessee's obligation to pay income-tax on the sums paid for their support. It may be that he could not deduct sums expended by him out of his income to support his children and others dependent upon him even though he were bound by law to support them but in the present case the maintenance is made a charge upon the estate by the late Raja's Will. The right of a widow under the Hindu Law to be maintained out of her late husband's share in the family property in the hands of surviving co-parceners it is true creates no immediate charge upon the property but if it became necessary to do so she could by proper steps obtain such a charge upon a reasonable portion of the joint property not exceeding her husband's share. See *Jayanti Subbiah v. Alamelu Mangamma* 27 M. 45. But in the present case the obligation of the assessee arises not by reason of the Hindu Law but because the income of the zemindari to the extent of the maintenance granted belongs to the widows and not to the assessee and the whole zemindari is subject to a charge for its enforcement. As already stated, however, there is no evidence before the Court to enable it to determine to what extent the maintenance is charge upon the taxable income of the assessee and we do not think the decision of the Commissioner in its result can be disturbed.

11. The result is that I find that the salami received in this case is not chargeable to income-tax,

that the royalties received are taxable income and that in the particular circumstances and on the facts disclosed no case has been made out for deducting the maintenance annuities from the taxable income of the assessee. The petitioner has succeeded roughly as to half the deductions which he claims and has failed as to the other half. We consider that in the circumstances he is entitled to be paid half the costs of this reference. The hearing fee we assess at Rs. 80.

12. In Case No. 73 of 1923 the petitioner is Raja Jeoti Prashad Singh Deo of Panchkote. His income for the year 1922-23 was assessed at a sum of Rs. 3,19,693 for the purposes of income-tax. This includes (1) Rs. 1,25,279 received as salami under mining leases similar to those in the other case and (2) Rs. 1,97,752 on account of royalties from the mines. It is conceded that the facts material for determining these two questions are similar to those of the previous case and that the same considerations apply. The judgment just pronounced in the previous case will govern this case in so far as the above two items, are concerned.

13. A further point, however, arises in this case as to the amount which should be, deducted from the total income for the purpose of arriving at the income assessable to super-tax. Section 55 of the Income Tax Act provides for the imposition of super-tax in any year at the rates laid down for that year by Act of the Indian Legislature. The super-tax for the year in question is laid down in the Indian Finance Act, 1922, Schedule III, Part 2. The effect of the latter enactment is that in the case of every individual super-tax shall be payable on the excess over Rs. 50,000 of total income whereas in the case of every Hindu undivided family it is payable only on the excess over Rs. 75,000 of total income. The assessee was assessed to super-tax as an individual. He claims that his income is that of a Hindu undivided family and that the larger exemption should be made. He admits that his estate is an impartible. Raj and that the collateral members of his family have their separate property, but he contends that he and his three sons constitute a Hindu undivided family and that the income is that of the joint family. Once it is admitted that the estate is impartible, and this is the only evidence we have about it, then, we must assume that the members of the joint family have none of the rights of co-partnership, except a right of succession by survivorship limited by the rule of impartibility which, allows only one member at a time to hold. They cannot demand partition or assert any right to any individual share in the estate nor can they restrain alienation. The income of the estate is that of the incumbent for the time being, nor does the fact that he is bound to maintain his sons entitle him to treat the income as that of the undivided family. It is essentially his income and I so hold. The Finance Act contemplates the larger deduction for purposes of super-tax only in a case where the income is that of the undivided family in which they are all jointly interested and not in the case of an impartible estate where the income is the sole property of the holder for the time being. In my opinion the Income Tax Commissioner was right in assessing super-tax upon the excess over Rs. 50,000 of total income. There will be the same order as to costs as in the previous case. We

assess the hearing fee at Rs. 80.

Foster, J.

14. I agree.

Cases Referred.

161 Ind. Cas. 112 : 48 C. 766 : 32 C.L.J. 433 : 25 C.W.N. 80
2(1866) 1 Eq. 656 : 14 L.T. 425 : 14 W.R. 528 : 35 Beav. 635
3(1878) 8 Ch. D. 357 : 47 L.J. Ch. 817 : 38 L.T. 760 : 26 W.R. 761
4(1870) 5 Ch. 193 : 22 L.T. 29 : 18 W.R. 772
560 Ind. Cas. 357 : 6 P.L.J. 62 : 2 P.L.T. 188; (1921) Pat. 81 (F.B.)
6(1903) A.C. 299 : 72 L.J.K.B. 617 : 51; W.R. 675 : 89 L.T. 1 : 19 T.L.R. 550