

PATNA HIGH COURT

Maharaja Chintamani Saran Nath Sah Deo

Vs

Commissioner of Income Tax

(G.N. Prasad, J.)

22.12.1965

JUDGEMENT

G.N. Prasad, J.

(1.) UNDER Section 60(1) of the Income-tax Act. 1922, the Appellate Tribunal, Patna Bench, has drawn up a statement of the case and formulated the following question of law for determination by the High Court: "Whether on the facts and circumstances of this case, the Tribunal was right in holding that the sum of Rs. 2,20,000 was the income of the assessee assessable to tax under the provisions of the I.-T Act?"

(2.) THE original assessee was Maharaja Pratap Udai Nath Shah Deo, the holder of an impartible estate. By an indenture of lease dated the 22nd January 1944, the assessee granted a lease of certain mining rights to Messrs Aluminium Production Company, Ltd., in respect of 171,08 acres of land for a period of thirty years on inter alia, the following terms: [JUDGEMENT_167_ITR62_1966.html](#) Previous to this, on the 20th March 1941, the assessee had granted a prospecting lease of 311 acres of land to the said Company for a period of one year at a premium or Salami of Rs. 100 per acre and royalty of -/8/- annas per ton. The question relates to the assessment year 1944-45. The Income-tax Officer took the view that as the assessee had chosen to take a very large sum by way of premium and a lower rate in respect of royalty, the premium or salami represented advance payment of royalty which was a revenue receipt and assessable to income-tax as such. On appeal, the Appellate Assistant Commissioner held that the sum of Rs. 2,20,000 which represented the salami was a capital receipt and was therefore, not taxable. Against that order, the Department preferred an appeal to the Appellate Tribunal which by its order dated the 7th August 1952 remanded the case to the Appellate Assistant Commissioner for a finding whether there were circumstances to indicate that the salami was really in the nature of an income receipt. In pursuance of this order, the Appellate Assistant Commissioner admitted certain additional evidence on the record and submitted his finding to the Tribunal agreeing with the view of the Income-tax Officer that a major part of the premium of Rs. 2,25,000 was taken in exchange of the royalty that would accrue to the assessee in further years and, therefore, it was a taxable revenue receipt. On receipt of this finding, the Appellate Tribunal recorded its final decision in favour of the Department, holding that the sum of Rs. 2,20,000 received by the assessee by way of salami or premium was

in sub-stance, an advance payment of royalty. Accordingly, the Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of the Income-tax Officer. At the instance of the assessee the present reference has been made by the Appellate Tribunal. Mr. K.B.N Singh appearing on behalf of the assessee has contended before us that the Appellate Tribunal was in error in holding that the sum of Rs. 2,20,000 was a revenue receipt representing an advance payment of royalty. It was urged that it was a payment for the mining rights which the assessee had granted to the lessee for a period of thirty years, and as such. It was a payment on capital account which is not taxable. In support of his contention, learned counsel relied upon the following decisions: *Province of Bihar v. Pratap Udai Nath Sahi Deo*¹. *Kamakshya Narain Singh v. Commr. of Income-tax, Bihar and Orissa*², Member for the Board of Agriculture Income-tax. *Assam v. Sindhurani Chaudhurani*³: *Chintamani Saran Nath Sah Deo v. Commr of Income-tax. Bihar and Orissa*⁴, and *Commr. of Income-tax, Assam, Tripura and Manipur v. The Panbari Tea Co. Ltd*⁵.,.

(3.) THE principle of law laid down by a Special Bench of this Court in Maharaja Pratap Udai Nath Sahi Deo's case, (1941) 9 ITR 313: (AIR 1941 Pat 289 SB) was that Salami cannot be regarded as income as a matter of law. Salami may in certain cases be regarded as advance payment of rent, and in such cases the Salami can rightly be regarded as income But where Salami cannot be regarded as payment of rent in advance, it cannot be regarded as income and would, therefore, not be taxable. It was further held by the Special Bench that the onus lies upon the Income-tax Authorities to show that their do exist facts which would make the salami income. But upon the facts of that particular case, it had not been shown that the salami received by the assessee constituted part of their income. In Kamakshya Narain Singh's case, (1943) 11 ITR 513: (AIR 1943 PC 153) the Privy Council drew a distinction between premium and rent in the following terms: "It (Salami) is a single payment made for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lessee That general right 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. But the royalties are on a different footing." In Sindhurani's case. (1957) 32 ITR 169: (S) AIR 1957 SC 729), the Supreme Court defined 'Salami" as follows: "The indicia of salami are (1) its single non-recurring character and (2) payment prior to the creation of the tenancy. It is the consideration paid by the tenant for being let into possession and can be neither rent nor revenue but is a capital receipt in the hands of the landlord." ;

Cases Referred.

- 1(1941) 9 ITR 313: (AIR 1941 Pat 289 SB)
- 2(1943) 11 ITR 513: (AIR 1943 PC 153)
- 3(1957) 32 ITR 169: (S) AIR 1957 SC 729
- 4(AIR 1961 SC 732)
- 5AIR 1965 SC 1871