SUPREME COURT OF INDIA

Commissioner of Income-tax, U.P.

v.

Gappumal Kanhaiya Lal

(Saiyid Fazl Ali, Patanjali Sastri, Mehr Chand Mahajan and Mukherjea, JJ.)

May 26, 1950

Judgment

Mehr Chand Mahajan, J.

1. This appeal from a judgment of the High Court of Judicature at Allahabad dated August 31, 1944, raises the same points as have been discussed in Civil Appeal No. 66 of 1949[1]. The Income-tax Appellate Tribunal referred four questions to the High Court of Judicature at Allahabad under section 66 (1) of the Indian Income-tax Act. These questions related to the year of assessment 1939-40. The High Court answered two of the questions in the affirmative and two in the negative. The two questions relating to the appeal are those that were answered in the affirmative and are as follows :—

> *"Whether (1) the amount of house-tax and (2) the amount of water-tax, imposed by the Municipal Board of Allahabad under section 128, sub-section (1) clauses (i) and (x), respectively of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under section 149 of that Act should be deducted as an allowance from the bona fide annual value of the property determined under sub-section (1) read with sub-section (2) of section (9) of the Act, on the ground that such amount is an annual charge, which is not a capital charge to which the property is subject within the meaning of clause (iv) of sub-section (1) of section 9 of the Act."*

2. Under section 128 of the United Provinces Municipalities Act, 1916, the municipality can impose a tax in the whole or any part of the municipality on the annual value of buildings or land or of both, and a water-tax on the annual value of buildings or land or of both. Every such tax on the annual value of buildings or land or both is leviable on the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Crown or from the Board, or on a building lease from any person. In any other case the tax is leviable from the lessor, if the property is let (vide section 149). Section 177 enacts that all sums due on account of a tax imposed on the annual value of buildings or lands or both shall subject to the prior payment of the land revenue, if any, due to His Majesty thereupon, be a first charge upon such buildings or lands.

3. It is apparent therefore that the provisions of the United Provinces Act in respect of the levy of the taxes are substantially similar to the provisions of the Bombay Act discussed in Civil Appeal No. 66 of 1949 For the reasons given in that appeal and as a result of that decision this appeal stands dismissed with costs and we consider that the High Court of Allahabad has answered the questions above mentioned correctly.

Appeal dismissed.

Case Number: Civil Appeal No. VI of 1949

Judgment(s) followed:

New Piecegoods Bazar Co. Ltd. v. Commissioner of Income-tax, Bombay[1]	1950 INSC 18	paras 1, 3

Statute(s) referred:

1.	Indian Income-tax Act, 1922	Section 66(1)	para 1
2.	United Provinces Municipalities Act, 1916	Section 128	paras 1, 2
3.	United Provinces Municipalities Act, 1916	Section 149	paras 1, 2
4.	Indian Income-tax Act, 1922	Section 9(1)	para 1
5.	Indian Income-tax Act, 1922	Section 9(2)	para 1
6.	Indian Income-tax Act, 1922	Section 9(1)(iv)	para 1
7.	United Provinces Municipalities Act, 1916	Section 177	para 2

Advocates:

For the Appellant: M. C. Setalvad, Attorney-General for India (H. J. Umrigar, with him). Agent: P. A. Mehta.

For the Respondent: Gopi Nath Kunzru (K. B. Asthana, with him). Agent: S. P. Varma.