Privy Council Appeal No. 15 *of* 1948

Sri Rajah Ravu Venkata Mahipathi Gangadhara Rama Rao Bahadur, Yuvarajah of Pithapuram and another - - - - *Appellants*

v.

The Commissioner of Income Tax, Madras - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JUNE, 1949

Present at the Hearing:

LORD OAKSEY
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT
SIR MALCOLM MACNAGHTEN

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal from a judgment of the High Court of Judicature at Madras dated 10th December, 1945, delivered on a reference made to it under section 66 (1) of the Indian Income Tax Act, (Act XI of 1922), as amended by various amending acts including the Indian Income Tax (Amendment) Act of 1939 (Act VII of 1939).

The appellants are the assessees.

The assessment was made with respect to the year 1942-1943, the previous year being 1941-1942.

The question arising for determination in this appeal is whether the appellants are exempt from taxation in respect of a part of their income amounting to Rs.7,612, derived from the sale of wood, bark, leaves, usufruct of trees, etc., on the ground that (*a*) the income was derived from a permanently settled estate and (*b*) the income was agricultural income within the meaning of section 2 (1) of the Indian Income Tax Act, 1922.

Before stating the facts, it will be convenient to refer to the relevant provisions of the Madras Permanent Settlement Regulation XXV of 1802, and of the Indian Income Tax Act bearing on the question.

Madras Permanent Settlement Regulation XXV of 1802

This regulation was passed "for declaring the proprietary right of lands to be vested in individual persons, and for defining the rights of such persons, under a permanent Assessment of the Land-revenue in the British territories subject to the Presidency of Fort St. George".

Articles 1, 2 and 4 of this Regulation are as follows:—

Article 1. For the reasons stated in it, Article 1 says:

". . . the British Government . . . has resolved . . . to grant to zamindars and other landholders, their heirs and successors, a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances."

Article 2.

"In conformity to these principles, an assessment shall be fixed on all lands liable to pay revenue to the Government; and, in consequence of such assessment, the proprietary right of the soil shall become vested in the zamindars or other proprietors of land, and in their heirs and lawful successors for ever."

Article 4.

"The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads of salt and saltpetre—of the sayar, or duties by sea or land—of the abkari or tax on the sale of spirituous liquors and intoxicating drugs—of the excise on articles of consumption—of all taxes personal and professional, as well as those derived from markets, fairs or bazars—of lakhiraj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents—the permanent assessment of the land-tax shall be made exclusively of the said articles now recited."

The Indian Income Tax Act (Act XI of 1922)

The relevant provisions of the Indian Income Tax Act are as follows :—

"*Sect.* 2. *Definitions*—In this Act, unless there is anything repugnant in the subject or context,—

(1) 'agricultural income' means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such;

(*b*) any income derived from such land by—

(i) agriculture,

* * * * * *"

"Section 4.—(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:—

(i) to (vii) . . . .

(viii) Agricultural income."

"*Sect.* 6.—*Heads of income chargeable to income-tax.*—Save as otherwise provided by this Act, the following heads of income, profits, and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

(i) Salaries.

(ii) Interest on securities.

(iii) Income from property.

(iv) Profits and gains of business, profession or vocation.

(v) Income from other sources.

Sect. 12.—*Other sources*—(1) The tax shall be payable by an assessee under the head "Income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads).

* * * * * *"

The appellants are the sons of the Maharajah of Pithapuram, the proprietor of the zamindary of Pithapur, which was permanently settled under the Madras Permanent Settlement Regulation. A part of the permanently settled estate known as Pulivela was settled upon the appellants by their father. This estate includes forest and non-forest areas of spontaneous growth from which the appellants derive income by the sale of wood, bark, leaves, minor forest produce, usufruct of trees including Jadivala in Jiarayati lands, and levy of licence fees. They also derive income from the sale of proceeds of trees which are also of spontaneous growth, in non-forest areas. It is admitted that the trees in the forest and non-forest areas have grown wild, and that agricultural operations are not carried on in any of the areas from which the income in question was derived.

For the year of account 1941-1942 the income derived by the appellants from the sources mentioned above amounted to Rs.7,612, and the appellants were taxed on this sum for the year 1942-1943. The material part of the assessment Order made by the Income Tax officer is as follows :—

> "It is stated that the income from forests as well as miscellaneous income from non-forest areas referred to above are in the nature of agricultural income and not liable to be taxed. It is however admitted that the entire income from various sources detailed above relates to trees of spontaneous growth in forests as well as in non-forest areas, that no trees are grown by the assessees and no agricultural operations are carried on in any of these areas. The income from these sources does not then fall under 'agricultural income' as defined in Section 2 (1) (*a*) and (*b*) (i) of the Income-tax Act and is not exempt from tax. The total income of Rs.7,612—1—5 will therefore be taxed."

The above Order was objected to before the Appellate Assistant Commissioner on two grounds:—(1) that as the government have fixed the public assessment for ever under the Madras Permanent Settlement Regulation, any further taxation will be illegal; and (2) that the income sought to be taxed was agricultural income within the meaning of section 2 (1) of the Indian Income Tax Act and exempt from the levy of the tax by virtue of section 4 (3) (viii). Both contentions were rejected by the Appellate Assistant Commissioner, and also on appeal from his Order by the Income Tax Appellate Tribunal.

At the request of the appellants the Tribunal referred two questions to the High Court. These are :

> "(1) Whether the imposition of income-tax in respect of income derived from a permanently settled estate would be a breach of Regulation XXV of 1802 relating to Permanent Settlement.
>
> (2) Whether the income of Rs.7,612 derived from the sale of wood, etc. (as detailed herein above) is exempt under Section 4 (3) (viii) read with Section 2 (1) of the Indian Income-tax Act, 1922."

Both these questions were answered against the appellants by the High Court.

In a recent decision of the Board, viz., *Raja Mustafa Ali Khan, through Special Manager, Court of Wards, Utraula, District Gonda* v. *Commissioner of Income Tax, United Provinces, Ajmer and Ajmer Merwara* (1948 L.R. 75 I.A. 268) it was held that:

> "Income derived from the sale of forest trees growing on land naturally and without the intervention of human agency, even if the land is assessed to land revenue, is not 'agricultural income' within

the meaning of s. 2 sub-s. 1 (*a*) or (*b*) of the Indian Income Tax Act, 1922, and is not therefore exempt from income tax under s. 4, sub-s. 3 (viii), of the Act. . . ."

In view of this decision, Mr. Cyril King, learned counsel for the appellants, stated frankly that he was not prepared to argue that the income in the present case is exempt from taxation on the ground that it is " agricultural income ".

Therefore, their Lordships have to consider in this appeal only one question, namely whether the income should be held to be exempt from taxation under the Indian Income Tax Act on the ground that it arose from a permanent settled estate which must be presumed to have been exempted from all taxation, beyond the *peishkush* (jama) payable to government, fixed under Regulation XXV of 1802.

The argument of the learned counsel proceeded on these lines:—The forest and the non-forest areas from which the income is derived have all been included in the zamin lands on which the zamindar has to pay *peishkush,* and as such *peishkush* has been fixed for ever no increase in the *peishkush* can ever be made under any circumstances, as the tax levied on the income from the produce of the forests will in effect amount to an addition to the *peishkush* and will thus be contrary to the terms of the sannad. It is admitted that the forest and non-forest areas were all included in the zamindary at the time of the settlement.

In support of the above argument reliance was placed on *The Chief Commissioner of Income Tax, Madras* v. *Zamindar of Singampatti* (I.L.R. 45 Madras 518) and *Maharajadhiraj of Darbhanga* v. *Commissioner of Income Tax* (I.L.R. 3 Patna 470) both of which support the appellants. It is not necessary to discuss these decisions, or to consider further the arguments of the learned counsel, for it was decided by the Board in *Probhat Chandra Barua* v. *The King-Emperor* (1930 L.R. 57 I.A. 228)—a case under the Bengal Permanent Settlement Regulation—that:

> " While the Bengal regulations contain assurances against any claim to an increase of the jama, based on an increase of the zamindari income, they contain no promise that a zamindar shall in respect of the income which he derives from his zamindari be exempt from liability to any future general scheme of property taxation, or that the income of a zamindari shall not be subjected with other incomes to any future general taxation of incomes.
>
> Under the Indian Income-tax Act, 1922, s. 6 (vi) (' other sources '), and s. 12 sub-s. 1, the zamindar of a permanently settled estate is assessable to tax under the Act in respect of income, profits, and gains derived from his zamindari, subject to the exemptions in s. 4 sub-s. 3; the assessment should be computed after making proper allowance, under s. 12, sub-s. 2, in respect of the jama assessed and paid."

Ten items were mentioned in that case, those being:

> " (i) Jalkar or rents received from fisheries.
>
> (ii) Ground rent from land used for potteries.
>
> (iii) Ground rent from land used as brick fields.
>
> (iv) Fees received from the tying up of boats against the assessee's land.
>
> (v) Fees received from land used for storing purchases of crops (paliali).
>
> (vi) Fees received from cart-stands.
>
> (vii) *Punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the zamindari year.
>
> (viii) *Nazar* for petitions presented to the zamindar, dealing with questions of succession, settlement and partition.

(ix) Ground rent for permanent shops at *hauts* and *bazaars*.

(x) Stall fees paid by temporary (daily) sellers at *hauts* and *bazaars*."

The Bengal Permanent Settlement Regulation is Bengal Regulation I of 1793. Though the two Regulations are differently worded it was conceded by the learned counsel, and their Lordships think rightly, that the language of both the Regulations is to the same effect. The decision of the Board was sought to be distinguished by the learned counsel on the ground that the items mentioned in the case before the Board had been excluded from the assessment of the jama at the time of the permanent settlement. If that was so, no doubt the decision would be inapplicable to the present case. As pointed out by Mr. Tucker, the learned counsel for the respondent, from the "case" stated by the Commissioner of Income Tax, Bengal, for the opinion of the High Court (see Vol. II I.T.C. 392 at 394), it clearly appears that some of the items were admittedly taken into account in assessing the jama. It appears from it that some of the items "such as 'Jalkar' were admittedly taken into account in assessing the jama at the time of the Permanent Settlement; some were not, such as the abwabs. The cases of some of the remaining items are not free from doubt . . .". In the circumstances, the learned counsel for the appellants stated that it was not possible for him to press his contention based upon the Permanent Settlement Regulation any further, but he pointed out that the decision in *The Chief Commissioner of Income Tax, Madras*, v. *Zamindar of Singampatti* (*supra*) on which he relied strongly has not been referred to in the judgment of the Board, though as will appear from the arguments reference had been made to it. Their Lordships have no doubt that though the case is not mentioned by name it must have been considered by the Board. In view of the decision in *Probhat Chandra Barua* v. *The King-Emperor* (*supra*) it must now be held that the decisions in *The Chief Commissioner of Income Tax, Madras* v. *Zamindar of Singampatti* (*supra*) and *Maharajadhiraj of Darbhanga* v. *Commissioner of Income Tax* (*supra*) are no longer good law. Following the decision in *Probhat Chandra Barua* v. *The King-Emperor* (*supra*) their Lordships hold that the decision of the High Court on the questions referred to it is right; and that the tax was rightly levied on the amount of Rs.7,612 in the present case.

For the above reasons, their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

(6:.342) W. 8084—42 190 6/49 D.L.

In the Privy Council

SRI RAJAH RAVU VENKATA MAHIPATHI
GANGADHARA RAMA RAO BAHADUR,
YUVARAJAH OF PITHAPURAM
AND ANOTHER

v.

THE COMMISSIONER OF INCOME TAX,
MADRAS

DELIVERED BY SIR MADHAVAN NAIR

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