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COMMISSIONER INCOME-TAX, U. P.

v.

KUNWAR TRIVIKRAM NARAIN SINGH

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April 9, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income Tax Act, 1922 (11 *of* 1922), *ss.* 2(1)(*a*) *and* 4(3) (*viii*)—*Agricultural Income—Nature of.*

The respondent was the head of a Hindu undivided family and C
was the descendant of a Jagirdar. Certain disputes between the Jagirdar and the Zamindars in the district had been settled in 1837 by a compromise between the British Government and the then Jagirdar, whereby, the Government granted the Jagirdar and his heirs a pension in perpetuity to be calculated on the basis of one-fourth of the revenue of the Jagir. By this arrangement the collections from the Jagir became payable by the Zamindars direct to the D
Government and the Jagirdar and his successors no longer remained the proprietors of the Jagir and became entitled only to a pension.

The Income-tax Officer assessed the receipt of the pension by the respondent as part of his regular income and rejected the latter's contention that the amount received was agricultural income within the meaning of s. 4(3)(viii) of the Income-tax Act, 1922.

In appeal, the Assistant Commissioner accepted the respondent's E
contention, but the Tribunal reversed this finding. The High Court, on a reference, decided the issue in favour of the respondent, on the grounds, inter alia, that the right conferred under the compromise of 1837 was a right to a share of one-fourth in the net land revenue collections and furthermore, the amount received by the successors of the Jagirdar varied from year to year. In the appeal before the Supreme Court, it was also contended on behalf of the F
respondent that the amount received was in the nature of a capital receipt, being a payment to the Jagirdar and his successors of compensation for relinquishing the title to the Jagir lands.

HELD: (i) Under the compromise and arrangement of 1837, the respondent had no interest in the land or in the land revenue payable in respect thereof. [704 A]

State of U.P. v. *Kunwar Sri Trivikram Narain Singh*, [1962] G
3 S.C.R 213, followed.

As the source of the income in this case was the arrangement of 1837, the income could not be held to be derived from land within the meaning of the definition of agricultural income in s. 2(1)(a) of the Act. Even if the income varied from year to year, the source of the income was still the arrangement and not land. [705 G] H

Maharajkumar Gopal Saran Narain Singh, v. *C.I.T. Bihar and Orissa*, 3 I.T.R. 237, *C.I.T. Bihar and Orissa* v. *Raja Bahadur Kamkhya Narayan Singh and Ors*, 16 I.T.R. 325, *Mrs. Bacha F. Guzdar* v. *C.I.T. Bombay* 27, I.T.R. 1, *Maharajadhiraja Sir Kameshwar Singh*, v. *C.I.T. Bihar and Orissa*, 41 I.T.R. 169, followed.

(ii) The amount received by the respondent was not a capital receipt but revenue income and therefore taxable.

A Where an owner of an estate exchanges a capital asset for a perpetual annuity, it is ordinarily taxable in his hands. The position would be different if he exchanged his estate for a capital sum payable in instalments. Such instalments when received would not be taxable as income. But in the present case there was no material to show that the amount received was an instalment of this nature. [706 H-707C]

B *Commissioner of Inland Revenue* v. *Wesleyan and General Assurance Society*, 30 T.C. 11, and *Perrin* v. *Dickson* 14 T.C. 608, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 68 of 1964.

C Appeal from the judgment and decree dated July 27, 1959 of the Allahabad High Court in Income-tax Reference No. 307 of 1957.

S. V. Gupte, Solicitor General, R. Ganapathy Iyer and *R. N. Sachthey*, for the appellant.

A. V. Viswanatha Sastri and *S. P. Varma*, for the respondent.

D The Judgment of the Court was delivered by

Sikri, J. This appeal pursuant to a certificate granted by the Allahabad High Court under s. 66A(2) of the Income-tax Act (hereinafter referred to as the Act) is directed against the judgment of the High Court in a reference under the Act, answering the E question referred to it in the negative. The question referred by the Appellate Tribunal is:

> "Whether on a true interpretation of clause (viii) of sub-section 3 of section 4 of the Indian Income-tax Act the sum of Rs. 36,396/- received by the assessee as an F allowance during the previous year of the assessment year 1949-50 is revenue income liable to tax under the Indian Income-tax Act, 1922?"

The relevant facts stated in the Statement of the case are as follows: The assessee is a Hindu undivided family headed by one Sri Trivikram Narain Singh who is a descendant of one Sri Babu G Ausan Singh who was the original founder and owner of what is known as Ausanganj State in the district of Benaras. The district of Benaras was formerly a part of Oudh territory. By a Treaty between the East India Company Nawab Asafuddaula in or about the year 1775, the province of Benaras was ceded to the British Government. The British Government granted a sanad of Raj to H Raja Chet Singh who in turn gave the Jagir of Parganas Seyedpore and Bhittery in perpetuity to Babu Ausan Singh. It appears that in 1796 there were some disputes between Babu Ausan Singh and the Zamindars in the district and the matter was referred by the Collector of Benaras to the Board of Revenue in Calcutta. The disputes between the Jagirdars and Zamindars ultimately ended in 1837 by a compromise between the British Government and the then Jagirdar Har Narain Singh whereby the British Government

granted a pension of Rs. 36,322/8/- to Babu Har Narain Singh and his heirs in perpetuity. The quantum of this pension was calculated on the basis of 1/4th of the revenue of the Jagir. By this arrangement the revenue or land collections of Jagir became payable by the Zamindars direct to the Government and by the grant of the pension, Babu Har Narain Singh and his successors no longer remained the proprietors of the Parganas or the Jagir and became entitled to merely a pension. The letter by which the amount of pension was determined at Rs. 36,322/8/- is dated 7th of July, 1837 and was from H. Elliot Esqr., the Secretary Sadar Board of Revenue, N.W.P. Allahabad, to J. Thompson Esqr., Offg. Secretary to Lt. Government, N.W.P.". A B

The pension was paid regularly from year to year by the Government to Babu Har Narain Singh and his heirs. During the previous year of the assessment year 1949-50, the assessee received a sum of Rs. 36,396/- on account of the aforesaid pension. The Income-tax Officer, in spite of the objection of the assessee, held that it was a regular annual income of the assessee and did not fall within the category of agricultural income-tax. He observed that "in fact this income arose from a statutory obligation of the Government to pay it, and although the Government recouped this from the person with whom the land was settled, land in the genealogical tree of Malikana appears in the second degree, its immediate and effective source is the Government's statutory obligation to pay it, and this obligation is not land within the meaning of Income-tax Act, vide *C.I.T.* v. *Raja Bahadur Kamakhaya Narain Singh*(1)". C D E

The assessee appealed to the Appellate Assistant Commissioner who held that "the alleged cash grant of varying and unspecified amount received by the appellant, in relation to land revenue of Seyedpur now Tehsil of District Ghazipur, clearly fell within the definition of agricultural income under Section 2(1) of the Income-tax Act." F

The Income-tax Officer appealed to the Income-tax Appellate Tribunal. The Tribunal held that the sum of Rs. 36,396/- was chargeable to tax under the Act as the income was not agricultural income for "although the pension was determined with respect to the quantum of the rent collection the rent collections or the land could not be said to be the immediate source of the pension. The source of the pension was a liability undertaken by the Government for extinguishing the proprietary rights of the Jagirdar and when the immediate source of the income was not land or rent collections from land, it is difficult to hold that the receipt of the assessee was agricultural income within the meaning of Section 4(3)(viii) of the Income-tax Act." G H

The High Court held that from the language of the letter of July 7, 1837, it was manifest that the right which was conferred

(1) (1948) 16 I.T.R. 325.

A was a right to a share of one-fourth in the net land revenue collections after deducting costs of Tahsil establishment. It relied on the fact that the amount which had been received by the successors of Babu Harnarain Singh varied from year to year. It observed that "the language of the letter and this conduct of the parties can only lead to the inference that, by this settlement contained in B the letter of 7th July, 1837, Babu Har Narain Singh and his successors were granted in perpetuity a right to one-fourth of the land revenue collections themselves and not merely a right to receive a sum of money calculated on that basis." The High Court accordingly answered the question in the negative.

C The learned Additional Solicitor-General, on behalf of the appellant, contends that according to the true interpretation of the letter dated July 7, 1837, no right in the land revenue was granted to the assessee. He relies on the decision of this Court in *State of Uttar Pradesh* v. *Kunwar Sri Trivikram Narain Singh*(1). That case arose out of the writ petition filed by the present res- D pondent in the High Court of Judicature at Allahabad for a writ in the nature of *mandamus* calling upon the State of Uttar Pradesh to forbear from interfering with his right to regular payment of the "pension, allowance or Malikana" payable in lieu of the hereditary estate of Harnarain Singh in respect of parganas "Syudpore Bhettree" and for an order for payment of the "pension, allowance E or malikana" as it fell due. This Court interpreted the same letter, dated July 7, 1837, and came to the conclusion that the respondent did not acquire any interest in land or any land revenue. Shah, J., speaking for the Court, observed:

> "Because the annual allowance is equal to a fourth share of the net revenue of the mahals, the right of the res- F pondent does not acquire the character of an interest in land or in land revenue. Under the arrangement, the entire land revenue was to be collected by the Government and in the collection Harnarain Singh and his descendants had no interest or obligation. As a consideration for relinquishing the right to the land G and the revenue thereof, the respondent and his ancestors were given an allowance of Rs. 30,612-13-0. The allowance was in a sense related to the land revenue assessed on the land, i.e. it was fixed as a percentage of the land revenue; but the percentage was merely a measure, and indicated the source of the right in lieu H of which the allowance was given."

The learned counsel for the respondent, Mr. A. Viswanatha Sastri urges that on its true interpretation the letter dated July 7, 1837, showed an arrangement for sharing collections. We are unable to agree with his contention. We respectfully adopt the reasoning and conclusion of this Court in the case of *State of*

(1) [1962] 3 S.C.R. 213.

Uttar Pradesh v. *Kunwar Sri Trivikram Narain Singh*(1) and hold that the respondent, under the arrangement, had no interest in land or in the land revenue payable in respect thereof. A

If this is the true interpretation of the arrangement arrived at, the question arises whether the pension or allowance is agricultural income. 'Agricultural income' is defined in s. 2 of the Act as follows: B

"(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:....." C

In *Maharajkumar Gopal Saran Narain Singh* v. *Commissioner of Income-tax, Bihar and Orissa*(2), the facts were that the assessee had conveyed the greater portion of his estate. The consideration for the transfer was, *inter alia*, an annual payment of Rs. 2,40,000/- to the assessee for life. The Privy Council held that this "annual payment was not agricultural income as it was not rent or revenue derived from land but money payable under a contract imposing a personal liability on the covenantor the discharge of which was secured by a charge on land." D E

The Privy Council, in *Commissioner of Income-tax Bihar and Orissa* v. *Raja Bahadur Kamakhaya Narayan Singh and Others*(3), construed the word 'derived' as follows:

"The word "derived" is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition." F G

This Court observed in *Mrs. Bacha F. Guzdar, Bombay* v. *Commissioner of Income-tax, Bombay*(4) as follow: H

"Agricultural income as defined in the Act is intended to refer to the revenue received by direct association with the land which is used for agricultural purposes and not by indirectly extending it to cases where that revenue or part thereof changes hands either by way of distribution of dividends or otherwise."

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(1) [1962] 3 S.C.R. 213.
(2) 3 I.T.R. 237.
(3) 16 I.T.R. 325.
(4) 27 I.T.R. 1.

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The same test was adopted by this Court in *Maharajadhiraja Sir Kameshwar Singh* v. *Commissioner of Income-tax, Bihar and Orissa*(1) and the Court again looked to the source of the right in order to determine whether income was agricultural income or not. Shah, J., observed:

B "The appellant has no beneficial interest in the lands which are the subject-matter of the trust: nor is he given under the trust a right to receive and appropriate to himself the income of the properties or a part thereof in lieu of any beneficial interest in that income. The source of the right in which a fraction of the net in-
C come of the trust is to be appropriated by the appellant as his remuneration is not in the right to receive rent or revenue of agricultural lands, but rests in the covenant in the deed to receive remuneration for management of the trust. The income of the trust appropriated by the appellant as remuneration is not
D received by him as rent or revenue of land; the character of the income appropriated as remuneration due is again not the same as the character in which it was received by the appellant as trustee. Both the source and character of the income are, therefore, altered when a part of the income of the trust is appropriated
E by the appellant as his remuneration, and that is so, notwithstanding that computation of remuneration is made as a percentage of the income, a substantial part whereof is derived from lands used for agricultural purposes. The remuneration not being received as rent or revenue of agricultural lands under a title,
F legal or beneficial in the property from which the income is received, it is not income exempt under section 4(3)(viii)."

It follows from the decisions of the Privy Council and the judgments of this Court cited above that if it is held in this case that the source of the allowance or pension is the arrangement
G arrived at in 1837, then the income cannot be held to be derived from land within the meaning of the definition in s. 2(1)(a) of the Act. It seems to us that in this case the source of income is clearly the arrangement arrived at in 1837 and, therefore, it is not agricultural income as defined in the Act.

H Mr. Sastri sought to distinguish those cases on the ground that the allowance here varied from year to year. Assuming that the allowance varied from year to year, the source of the income still remains the arrangement and not land.

The next point that arises in this case is whether the allowance is taxable income at all. Mr. Sastri contends that it is capital receipt. He says that if the assessee's predecessor had received

(1) 41 I.T.R. 169.

compensation for relinquishing his title to the lands in dispute, that would have been a capital receipt and not taxable. He further says that the allowance was in fact a payment of the compensation for relinquishing the title to those lands. He says that we must consider the quality of the income and not its periodicity. He refers to the following passage from the speech of Viscount Simon in *Commissioner of Inland Revenue* v. *Wesleyan and General Assurance Society*(1):

> "It may be well to repeat two propositions which are well established in the application of the law relating to Income-tax. First, the name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. To call a payment a loan if it is really an annuity does not assist the taxpayer, any more than to call an item a capital payment would prevent it from being regarded as an income payment if that is its true nature. The question always is what is the real character of the payment, not what the parties call it."

He, therefore, asked us to disregard the word 'pension' in the letter dated July 7, 1837, and determine the real character of the payment. Another passage from the speech of Viscount Simon is also relevant. Lord Simon observed:

> "Secondly, a transaction which, on its true construction, is of a kind that would escape tax, is not taxable on the ground that the same result could be brought about by a transaction in another form which would attract tax. As the Master of the Rolls said in the present case: 'In dealing with Income-tax questions it frequently happens that there are two methods at least of achieving a particular financial result. If one of those methods is adopted tax will be payable. If the other mehod is adopted, tax will not be payable. . . . The net result from the financial point of view is precisely the same in each case, but one method of achieving it attracts tax and the other method does not. There have been cases in the past where what has been called the substance of the transaction has been thought to enable the Court to construe a document in such a way as to attract tax. That particular doctrine of substance as distinct from form was, I hope, finally exploded by the decision of the House of Lords in the case of *Duke of Westminster* v. *Commissioner of Inland Revenue*(2)".

It seems to us that where an owner of an estate exchanges a capital asset for a perpetual annuity, it is ordinarily taxable income in his hands. The position will be different if he exchanges

(1) 30 T.C. 11.
(2) 19 T.C. 490.

A his estate for a capital sum payable in instalments. The instalments when received would not be taxable income.

Mr. Sastri, relying on *Perrin* v. *Dickson*(1) contends that an annuity is not always taxable as income. This is true, but in this case no material has been produced to show that the allowance was
B in fact a payment in instalments of the value of the disputed title of the assessee's predecessor in 1837.

In the result, we hold that the allowance is revenue income and not exempt from taxation as agricultural income. Therefore, we accept the appeal and answer the question referred in the affirmative. The appellant will have his costs here and in the High
C court.

Appeal allowed.

(1) 14 T.C. 608.