INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Costello JJ.

In re KRISHNALAL SIL*.

1932

July 4, 5, 19.

Income-tax—Property—Annual value—Municipal tax, if should be deducted—Indian Income-tax Act (XI of 1922), s. 9—Calcutta Municipal Act (Beng. III of 1923), s. 149.

The owner's share of municipal tax on house property is, in law, a liability of the owner and the discharge thereof is a benefit to him.

In calculating the annual value of property under section 9 of the Indian Income-tax Act, no deduction can be made on account of the municipal tax thereon, under section 149 of the Calcutta Municipal Act.

Chhuna Mal Salig Ram v. *Commissioner of Income-tax, Punjab* (1) dissented from.

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The facts of the case appear fully from the judgment.

S. N. Banerjee (with him *P. N. Banerjee*) for the assessees. It is not a question of deduction at all. It is a question of calculating the *bonâ fide* annual value. That must be done on a notional basis of what is being derived from the land. When the tenant pays the taxes the landlord derives nothing from it. The tax is no part of the annual value: *Chhuna Mal Salig Ram* v. *Commissioner of Income-tax, Punjab* (1). I rely strongly on the judgment of Tekchand J.

In any event, at least half of the owner's share of taxes can never be included in the annual value. The annual value of a house should be calculated irrespective of the bargain between the landlord and the tenant.

N. N. Sircar, Advocate-General (with him *Radhabinode Pal*) for the Income-tax Department.

*Reference under section 66(2) of the Indian Income-tax Act, 1922 (No. 10 of 1932).

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If the reasons given by Tekchand J. in *Chhuna Mal Salig Ram* v. *Commissioner of Income-tax, Punjab* (1) be correct, the annual value would be variable and would depend on municipal taxes, the rate of income-tax, the total income of the landlord and various other factors. If the tenant discharges the owner's obligation to pay tax, the landlord must be deemed to have received that amount indirectly. In re *Commercial Properties, Ltd.* (2), *Reference from the Board of Revenue under section 46 of the Indian Stamp Act, 1879* (3).

Cur. adv. vult.

RANKIN C. J. The assessees are the owners of two properties in Calcutta; (*a*) 5, Dharmatala Street and (*b*) 275, Bowbazar Street, which, in the year of account 1929-30, were let to a tenant, on terms that he should pay for the former Rs. 3,000 per month and for the latter Rs. 1,000 per month and that in each case he should also pay (*inter alia*) the owner's share of the consolidated rate levied under the Calcutta Municipal Act, 1923. This Act, by the opening words of section 149 thereof, provides:

> One half of the consolidated rate shall be payable by the owners of the lands and buildings and the other half by the occupiers thereof.

The assessee's income from these properties is assessable to income-tax under the head "property", in the manner prescribed by section 9 of the Act (XI of 1922).

In their return of income for the year of assessment 1930-31, the assessees put down the figure Rs. 48,000 as the annual value of the properties. The Income-tax authorities, finding that, in the year of account, the tenant, in addition to the rent paid to the owners, paid to the Calcutta Corporation Rs. 8,288 in respect of the owner's share of the consolidated

(1) [1931] A. I. R. (Lah.), 320, 329. (2) (1928) I. L. R. 55 Calc. 1057.
(3) (1883) I. L. R. 7 Mad. 155, 160.

rate, added this figure to the rent of Rs. 48,000, before calculating the allowances to which the assessees were entitled under section 9.

The assessees are desirous to maintain that this sum of Rs. 8,288 should not come into the calculation of their income-tax at all and that the *bonâ fide* annual value of the properties is Rs. 48,000 and no more.

The Commissioner of Income-tax has referred to this Court two questions—the first being framed by the assessees, the second framed by himself :—

(1) Whether the owner's share of municipal tax, payable under the Calcutta Municipal Act, 1923, is virtually a tenant's tax ?

(2) In calculating the annual value of property under section 9 of the Indian Income-tax Act (XI of 1922), can any deduction be made on account of the municipal tax payable thereon under section 151 of the Calcutta Municipal Act, 1923 ? (In this question "section 151" would seem to mean "section 149.")

The Commissioner's opinion upon both questions is in the negative. The assessees by their counsel disclaim any contention that the second question should be answered in the affirmative. They desire to contend that the sum of Rs. 8,288 does not come into the "*bonâ fide* annual value" at all; if that value is once ascertained, they agree that there can be no deduction on account of municipal tax. I agree with the Commissioner that there can be no deduction on this account from the annual value of the properties, as this is not authorised by the Act.

This leaves the first question to be answered. We must treat it as a question of law and the only answer which a court of law can give is that one half of the rate is imposed on the owner and is a liability of the owner. If by the covenants in the lease, the discharge of this liability is undertaken by the tenant, this is part of the consideration obtained from the tenant by the owner. If the owner's share of the rate in respect of a house is Rs. 30, it can make no difference, for purposes of income-tax, whether the annual rent reserved is Rs. 4,030 without any special stipulation about payment of rates or whether the rent reserved is Rs. 4,000 with a stipulation that the tenant shall in

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addition pay the owner's share of the rate. In neither case is the *bonâ fide* annual value necessarily Rs. 4,030 merely because the bargain of the parties points to this figure. The house may have been let cheap or dear, the lease may be eighty years old or a thing of yesterday, personal relations or business relations may have led to exceptional terms as to rent, but in general, at least, the actual terms obtained by the landlord in the particular case are some evidence of "the sum for which the property might reasonably be "expected to let from year to year", and, as such evidence, the two cases put are *primâ facie* evidence in favour of the same figure. In the particular case before us, the tenant may be paying in all Rs. 56,288 for property which is only worth Rs. 48,000, but there is some presumption that he is not. The presumption may be readily rebutted by evidence, *e.g.*, of a fall since the date of his lease in the letting value of houses in general or of houses of a particular class or situation. But it certainly matters nothing to the tenant whether he pays Rs. 8,288 to the landlord or to the municipality on the landlord's behalf.

That the total consideration, which a landlord may reasonably expect to receive in a particular year from a tenant in respect of a house, is not clear profit to the landlord, is an obvious fact which the statute recognises by providing that allowances shall be deducted therefrom in respect of seven different matters, or five, if we eliminate the question of repairs. It is, therefore, fallacious to contend that, because, when the tenant pays the landlord's tax, the sum paid is not part of the landlord's "profit", this term of the bargain can have no bearing when the bargain is being considered as evidence (for what it is worth) of the annual value. This consideration appears to me to be in itself an answer to part of the reasoning of the majority of the Judges who decided the case of *Chhuna Mal Salig Ram* v. *Commissioner of Income-tax, Punjab* (1). The annual value, as defined by sub-section 2 of section 9, is a hypothetical sum and it is

(1) [1931] A. I. R. (Lah.) 320.

quite possible that the actual consideration paid or stipulated for by the parties in any individual case may be out of all relation to this sum, or much inferior, as evidence thereof, to the evidence afforded by transactions by other parties in respect of other property more or less comparable in value with the property in question. But the English and Indian cases referred to by Tekchand J. in the case cited do not mean that the "hypothetical sum" to be arrived at before deducting allowances is a sum representing profit to the owner in the sense of clear profit or net profit. They show that the parallel expression is "gross rental". The discharge of the landlord's liability for rates is none the less a payment to the use of the landlord, which the tenant would presumably not make, unless the house was worth it in addition to the rent reserved as such, although the landlord for certain purposes considers that he gets nothing for his rates and sets the payment against the liability as negativing the benefit which he derives from the payment. In *Chhuna Mal Salig Ram* v. *Commissioner of Income-tax, Punjab* (1), the case is put of a house situate in a town, which levies no house tax. If such a tax is introduced and the landlord is able to shift the incidence of the new tax on to the tenant, whether by increasing his rent *eo nomine* or by making him pay the owner's tax in addition to the former rent, what then? The very fact that the landlord can do this would seem to mean either (*1*) that the house had not been let at its full value or (*2*) that, by the new conditions, landlords in general have been enabled to raise their terms, or (*3*) that the individual tenant is paying more than is justified by the general level of rents in order to avoid disturbance or for some other reason. In the case last mentioned, upon proof of the facts, the additional sum would be shown to have no bearing on the annual value, but the *primâ facie* conclusion, from the additional payment, would have been otherwise had it not been negatived by the proof.

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I respectfully disagree with the decision of the majority of the Full Bench of the Lahore High Court in the case referred to.

The assessees in the case before us found an argument upon the terms of section 151 of the Calcutta Municipal Act, 1923, which deals with unoccupied property. Its broad effect is to provide that one half of the owner's share of the rate shall be remitted for the period during which the property is unoccupied and unproductive of rent. By section 152, an occupier gets the whole of his share of the rate remitted for the period during which he does not occupy. From these provisions, the assessees profess to derive the proposition that the tax is a tenant's tax, or an occupation tax, or an incident of the property being occupied by the tenant. For this, support is claimed from certain observations made in the Lahore case with reference to the Punjab Municipal Act of 1911, where the tax was said to be "in reality and "substance a tax on 'rental' connected with and "dependent upon occupation of the premises whether "by the owner himself or by a tenant under him".

As, in Calcutta, the owner is charged upon property which is bringing in no rent, though he is not charged at the full rate, but only at fifty per cent. of it, the truth of these propositions is not for our present purpose plain. But were they undeniable, they would not affect the question before us. "The "sum for which the property might reasonably be "expected to let from year to year" is a hypothetical sum into which rates as such do not enter at all and from which they are not to be deducted. But if and in so far as the actual bargain made by the parties is considered as evidence of the amount which a hypothetical tenant would give or the landlord reasonably expect to get (in some cases it will be most misleading and in other cases worth little or nothing by itself) the figure which matters is the figure which represents the whole of the consideration exacted by the landlord for the right to use and occupy the property as distinct from any other rights.

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I would answer the first question by saying: "the "tax is imposed by section 149 of the Calcutta "Municipal Act, 1923, upon the owner and in law is a "liability of the owner. The discharge thereof is a "benefit to the owner". I would answer to the second question: "No".

I would add that this decision is not a finding that (apart from any question of repairs) the annual value of these premises is Rs. 56,288 or any other sum. That is a question of fact and the total consideration paid by this particular tenant is not necessarily the annual value in the year of account.

The assessees should pay the costs of the Reference.

GHOSE J. I agree.

COSTELLO J. I have had the advantage of perusing the judgment of the learned Chief Justice, which has just been read by Mr. Justice C. C. Ghose, and I agree with it.

Attorneys for assessee: *C. C. Basu.*

Advocate for Income-tax Department: *R. B. Pal.*

S. M.