

## REFERENCE UNDER THE INCOME-TAX ACT.

*Before Derbyshire C. J. and Costello J.*

1936

Feb. 28.

*In re* GOPEE RAM GOBINDA RAM.\*

*Income-tax—Reference to High Court, Correct way of framing.*

When questions are asked by the Commissioner of Income-tax for the opinion of the High Court, one question should be asked at a time without attempting to combine two or more questions in the form of one question.

Further, the question should not be in the abstract divorced from the facts of the particular case.

INCOME-TAX REFERENCE at the instance of the assessee.

As directed by Lord-Williams and Jack JJ. in their order dated January 9, 1935, and passed under s. 66 (3) of the Income-tax Act, Mr. W. Johnston, I.C.S., Commissioner of Income-tax, Bengal, on April 14, 1935, drew up and submitted a statement of case for the High Court's decision on the question of law formulated by their Lordships as follows:—

Whether it is open to a mortgagee, notwithstanding a stipulation in the mortgage deed to apply payments, or, in case when the mortgagee has taken possession, the net realisations of the mortgaged property towards interest, to appropriate such payments or realisations with or without the consent of the mortgagor towards principal?

*S. N. Banerjee* and *J. Bose* for the assessee.

*A. K. Roy*, Advocate-General. I have a preliminary objection as to the form of the statement. In *Raghunandan Prasad Singh v. Commissioner of Income-tax, Bihar and Orissa* (1) Lord MacMillan deprecates a statement of law in a hypothetical case.

*Banerjee*, continuing. We formulated our questions as printed at p. 38 of the paper book, but their Lordships settled the question themselves.

\*Income-tax Reference, No. 8 of 1934, under s. 66(3) of the Indian Income-tax Act, 1922.

(1) (1933) I. L. R. 12 Pat. 305 (309); L. R. 60 I. A. 133 (136).

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*Gobinda Ram.*

[DERBYSHIRE C. J. They are abstract questions of law.]

But in relation to the facts of this case.

[After reading the reference by the Commissioner of Income-tax] one important clause—a very peculiar clause—in the mortgage deed has been overlooked, that all payments made are to carry interest until repayment.

As there are annual rests at the end of the year, the interest does become capital. I don't think I can carry my point further.

*A. K. Roy*, Advocate-General, and *Ramesh Chandra Pal* for the Income-tax Department were not called upon to reply.

DERBYSHIRE C. J. [after reciting the facts and deciding the case on the merits] \* \* \* \* \*  
 We have something to say about the form of the question as originally suggested by the petitioner in this case. Two questions were rolled up in the form of one question. We have endeavoured to answer it in the light of the facts stated in this particular case. We think that, when questions are asked for our opinion, one question should be asked at a time; an attempt should not be made to combine two or more questions in the form of one question. Further, the questions should not be divorced from the facts of the particular case and should not be in the abstract, as is the case here.

COSTELLO J. I agree.

Attorney for assessee: *M. N. Sen.*

Advocate for Income-tax Department: *Ramesh Chandra Pal.*

G. S.