MISCELLANEOUS CIVIL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

1927
May, 9.

IN THE MATTER OF SHIB LAL, GANGA RAM.*

Act No. XI of 1922 (Indian Income-Tax Act), section 4—Income-tax—"Agricultural income"—Stone quarries—Profits not exempt from assessment to income-tax because they have already been taken into account in the assessment of land revenue.

There is no provision in the Income-Tax Act which exempts from liability to assessment profits from stone quarries, not being agricultural income, which have already been taken into account in assessing land revenue.

This was a reference made by the Commissioner of Income-Tax for the United Provinces under section 66 (2) of the Indian Income-Tax Act, 1922. The facts of the case sufficiently appear from the order of the Court.

Munshi *Narain Prasad Ashthana*, for the applicant.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

WALSH and BANERJI, JJ. :—We have no doubt as to what the answer to this question must be. The assessee is the owner and occupier of certain land in the Agra district which contains valuable stone quarries. These he has been working at a profit for a very considerable time. In 1879, when the land in question was assessed for revenue purposes, the extract from the Settlement Officer's note, which forms part of this case, shows that the revenue was assessed against the then owner upon the basis of the rental value arrived at by taking into account the profits which he was making from the working of the quarries. That would be quite correct if the problem to be solved was the rental value of the land. It was not cultivated land, although it had been cultivated. The Settlement Officer says :—

* Miscellaneous Case No. 415 of 1927.

"Large areas of cultivated land have been gradually absorbed by the quarries." Taking into account the average income from the quarries, and adding it to the supposed rental value of the rest of the land, he arrived at an annual figure of Rs. 1,380. He does not profess to have arrived at a really accurate figure. Indeed, he says that the figures are below the mark, and that in later years the profits have very much increased. But whether the assessee has been paying too much or too little, there is no doubt that from 1879 he has been paying in the shape of revenue a contribution to the public funds, based upon the profits made from the quarries. The question is whether that relieves him from the undoubted statutory duty of making a return of the profits which he makes from the quarries and of being assessed thereon for the purpose of income-tax. As to his *primâ facie* liability to pay income-tax upon the profits of the quarries, there can be no doubt. Section 4 provides for that in the plainest terms. Certain exemptions from liability to income-tax are provided in section 4, and of these the only one material to this case is agricultural income. Therefore we have to see whether the assessee can bring himself within the exemption. Agricultural income means rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue or subject to a local rent collected by a Company. Nobody can seriously contend that profits from the working of quarries and the sale of stone is agricultural income within the meaning of that definition, or that the quarries themselves are land used for agricultural purposes. The assessee, therefore, fails to bring himself within the exemption. His real complaint of course is that in being assessed for income-tax upon the profits derived from the quarries, he is paying to some extent twice over, but in order to obtain exemption from liability under the Income-Tax Act he would have to

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show that there was some provision in the Act which exempted profits which had been either taxed or taken into account in assessing revenue for some other State purpose. There is no such provision in the Act. The Income-Tax Act is of a much later date than the settlement in question, and no doubt the contingency which has occurred in this case, namely, of an assessee paying already to some extent tax in respect of profits arising from his business, by reason of the fact that they had been taken into account in assessing revenue by the revenue authorities, was overlooked. This, however, is no concern of the Income-Tax authorities, who have only to administer the Act as they find it. Whether the fact that a later Act has imposed a revenue tax upon the profits of the quarries, which the revenue authorities have already taken into account in assessing rental value for another purpose, affects the question between the revenue authorities and the present assessee in respect of his liability to pay revenue, is a question which we cannot decide. We merely content ourselves with saying that unless there is some provision in the revenue law which makes it clear that a double tax is intended to be made in respect of such sources of profit, the assessee appears to have a strong ground for applying to the revenue authorities for reconsideration of the rental value, on the ground that part of the land in respect of which he has been assessed for revenue has been assessed on the basis of the profits he is making from the working of the quarries, because the result of this decision will be, unless some amelioration is provided by the revenue authorities, that he will have to pay in respect of these profits twice over.

The answer to the question which is contained in paragraph 6 of the stated case is "No".

Under the circumstances we think that both parties ought to pay their own costs, and we assess the fee of

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the Government Advocate at Rs. 100. Any amount deposited by the assessee will be returned to him.

Reference answered in the negative.

Before Mr. Justice Boys and Mr. Justice Kendall.

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HAIDARI BEGAM AND OTHERS (DEFENDANTS) *v.* SRIMAN THAKUR LAKSHMI NARAINJI MAHARAJ (PLAINTIFF) AND MUSAMMAT SUNDAR AND OTHERS (DEFENDANTS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 164 (2), 165 *and* 166—*Lambardar and co-sharer—Liability of representative of deceased lambardar for the negligence or misconduct of his predecessor.*

A plaintiff can, in a suit against the lambardar, prove negligence or misconduct with a view to getting a decree against the lambardar personally or, in a suit against a holder of the assets of the lambardar, can prove the negligence or misconduct of the deceased lambardar in order to get a decree against the estate of the deceased lambardar in the hands of such holder.

The words " plaintiff " and " defendant " as used in sub-section (2) of section 164 are merely synonyms for the " co-sharer " and " lambardar " referred to in sub-section (1), just as they are used in section 165. *Dip Singh* v. *Ram Charan* (1), and *Bharat Singh* v. *Tej Singh* (2), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Maulvi *Muhammad Abdul Aziz*, for the appellants.

Dr. *M. L. Agarwala*, for the respondents.

BOYS and KENDALL, JJ.—This is a suit under section 164 of the Tenancy Act for profits by a co-sharer against the heirs of a lambardar. It has been found not merely that there were no reliable accounts of actual

* Second Appeal No. 731 of 1925, from a decree of R. L. Yorke, District Judge of Bulandshahr, dated the 27th of February, 1925, reversing a decree of A. Shakur, Assistant Collector, first class of Bulandshahr, dated the 22nd of September, 1923.

(1) (1906) I.L.R., 29 All., 15. (2) (1917) I.L.R., 40 All., 246.