

1925. answer is in the negative. The Subordinate Judge has held the plaint to be an application within the purview of section 14 of Act XX of 1863. It is for consideration whether, if and when the application has been admitted, the principal civil court will be able to give the relief which the plaintiff seeks. If the court is not competent to appoint or cause to be appointed a new trustee, he will probably not remove the defendant and will probably direct the appellant to sue under section 92 of the Civil Procedure Code. Therefore it is for consideration whether the plaintiff will be better advised to adopt the procedure under section 92, Code of Civil Procedure, instead of that under section 14 of Act XX of 1863. However, it is not for us to advise the plaintiff as to how he should proceed. All that we can do is to affirm the Subordinate Judge's order and to dismiss the appeal with costs.

Ross, J.—I agree.

*Appeal dismissed.*

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## REFERENCE UNDER THE INCOME-TAX ACT, 1922.

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*Before Dawson Miller, C.J. and Jwalu Prasad, J.*

1925. INCOME-TAX COMMISSIONER, BIHAR AND ORISSA

v.

SHIVA PRASAD SINGH.\*

April, 24,  
27.

*Income-tax Act, 1922 (Act XI of 1922), section 12—Income derived from royalties of collieries—whether deduction allowed on account of cesses paid under Jharia Water-supply Act, 1914 (Bihar and Orissa Act V of 1914), section 45, and Bihar and Orissa Mining Settlement Act, 1920 (Bihar and Orissa Act IV of 1920), section 23.*

Cesses paid under the Jharia Water-supply Act of 1914 and the Mining Settlement Act of 1920 cannot be deducted, under the Income-tax Act, 1922, section 12, for the purpose of arriving at the taxable income under the head of royalties.

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\* Miscellaneous Judicial Case no. 136 of 1924.

*Raja Jyoti Prasad Singh Deo*, In the matter of (1), applied.

1925.

*K. M. Selected Coal Company of Manbhum*, In the matter of (2), *Manindra Chandra Nandi v. The Secretary of State for India* (3), referred to.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA

v.  
SHIVA  
PRASAD  
SINGH.

Although the payment of cesses under the two Acts is a necessary expense arising in connection with the ownership of royalties, it is, nevertheless, in no sense an expenditure incurred for any purpose incidental to the making of the income.

The question for decision is stated in the following statement of the case by the Commissioner of Income-tax:—

The question for the decision of the High Court is, whether an assessee who is assessed under section 12 of the Income-tax Act, 1922, on income from "other sources" (consisting of royalties on coal), is entitled to have deducted, before the taxable income is determined, the cesses paid by him to the Jharia Water Board and the Mines Board of Health.

21st Nov.  
1924.

2. The facts are undisputed; the assessee is a *zamindar* who derives considerable income from royalties on coal; under the Jharia Water-supply Act and the Bihar and Orissa Mining Settlement Act, cesses are imposed on owners of mines and receivers of royalty. Under the Water-supply Act, the cess is assessed on the actual amount of royalty received during the preceding calendar year, and, under the Mining Settlement Act, the demand is a percentage (at present 20 per cent.) of the average of the preceding three years' road-cess demand.

3. In my opinion such cesses are not deductible expenses under the law. Under section 12(2) of the Act, the only permissible allowance is any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning the income. The Patna High Court held in case no. 102 of 1920 [*Raja Jyoti Prasad Singh Deo* (1)] that road-cess could not be deducted before determining the assessable income from royalty; (this was a decision under the Income-tax Act of 1918, but for the present purpose the relevant sections of the Income-tax Act of 1922 are practically identical). It is admitted on behalf of the assessee that this decision would apply to the present case if he were assessed to these local cesses on his net income and not on his gross income. His position is that if he receives Rs. 5,000 royalty and in turn pays Rs. 4,000 in royalty to a superior landlord he is assessed to water-cess on Rs. 5,000 and not on the net income of Rs. 1,000.

(1) (1921) 6 Pat. L. J. 62.

(2) (1924) I. L. R. 3 Pat. 295.

(3) (1907) I. L. R. 34 Cal. 257.

1925.

**INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA  
v.  
SHIVA  
PRASAD  
SINGH.**

This argument would not in any case apply to the cess payable to the Mines Board of Health which is based on the road-cess which is in turn calculated on the net profits. But, in my opinion, the argument has no validity even as regards the water-cess. In the case already referred to, the Court held that the payment of cess (*i.e.*, road-cess) is a necessary expense arising in connection with the ownership of royalties but it is in no sense an expenditure incurred for any purpose incidental to the making of the income. This remark applies equally to the cesses now under consideration. Moreover, income-tax is assessed on the net income; in the example given above income-tax would be assessed on Rs. 1,000, less the expenses incurred in collecting the Rs. 5,000.

In Miscellaneous Judicial Case no. 77 of 1923 [*K. M. Selected Coal Company of Mambhum* (1)], the High Court of Patna held that the cesses in question could be legitimately deducted from the profits of a colliery (an assessment of a business under section 10) before determining the assessable income. But that case was definitely and deliberately distinguished from the previous one mainly on the ground that the local cesses were not rates levied after the profits had been ascertained. In fact the colliery business pays on its raisings and despatches, irrespective of whether it made any profits at all.

*Naresh Chandra Sinha* and *B. B. Ghosh* for the assessee: An assessee who is taxed under section 12 of the Income-tax Act in respect of royalties received is entitled to claim a deduction of the cesses paid by him under the Mining Settlement Act and Water-supply Act, the expenditure being involuntary and incurred solely for the purpose of earning or making the profits. Before the taxable income can be ascertained under section 12 allowance has to be made for the cesses leviable on the income which are not in the nature of voluntary payments. If, in calculating the actual amount of profits received by way of royalties, I have to make an allowance for the cesses payable by me, such payments ought to be deducted in arriving at the taxable income. In *K. M. Selected Company of Mambhum*(<sup>1</sup>) the cesses in question were deducted in calculating the taxable income of the mine-owner. On the same principle the holder of royalties is entitled to have these rates deducted from his assessable income.

[CHIEF JUSTICE.—The important point of distinction is that in the case of owners of mines the

cesses are levied on the annual output of coke and coal apart from the fact of profits or gains, while in the case of holders of royalties they are levied on the amount of royalties received.]

But section 12 which speaks of profits or gains from other sources, lays down that in calculating these profits or gains, whatever comes to the hands, of the assessee after making inevitable payments should be deemed to be the "income" within the meaning of that section.

[CHIEF JUSTICE.—How do you distinguish *Raja Jyoti Prasad Singh Deo*(<sup>1</sup>).]

Road-cess is a tax on the profits, hence it cannot be deducted; but the cesses in question are levied on the gross income of the assessee. In coming to a calculation as to net profits or gains, they have to be deducted.

*Sultan Ahmed, Government Advocate*, for the Income-tax Commissioner was not called upon.

S. A. K.

DAWSON MILLER, C. J.—This matter comes before us on a case stated by the Commissioner of Income-tax under section 66(1) of the Income-tax Act, 1922. The assessee in the case is the Raja of Jharia who derives a considerable income as the owner of royalties which he receives under mining leases, of which he is the lessor, in the Jharia coalfields. The question for our opinion is whether in arriving at the taxable income derived from that source the assessee is entitled to deduct certain cesses or rates imposed upon the owner of such royalties under two local Acts, known as the Jharia Water-supply Act, 1914, and the Bihar and Orissa Mining Settlement Act, 1920. Under the former Act a cess is leviable within the area prescribed both upon the owners of coal mines and upon

1925.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA  
v.  
SHIVA  
PRASAD  
SINGH.

(1) (1921) 6 Pat. L. J. 62.

1925.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA

v.

SHIVA  
PRASAD  
SINGH.

DAWSON  
MILLER,  
C. J.

the holders of royalties from those mines. In the case of mine-owners who are themselves working the mines the cess is a cess on the annual despatches of coal and coke from the mine and would be payable apart altogether from whether any profit is derived from the actual working of the mine. In the case of a person receiving royalties from mines the cess is paid upon the royalties received at a certain rate which is determined by the Board with the approval of the Local Government subject to a maximum of 5 *per cent.* on the assessed amount of royalty. Under the latter Act of 1920 a somewhat similar rate is imposed under section 23 both upon the owners of mines and upon persons who receive any royalty, rent or fine from such mines. In this case the assessment is based, in the case of owners of mines, on the actual output of their mines, and here again the assessment in the case of owners is apart from any profit that may or may not be derived from the working of the mine. In the case of receivers of any royalty, rent or fine their assessment is calculated on a percentage of road-cess payable by such persons. At present the amount is one-fifth, or 20 *per cent.* of the average yearly road-cess payable by such persons in respect of their royalties during the last three years.

The only question which arises for decision in the case is whether under section 12 of the Indian Income-tax Act these cesses or taxes can be deducted in arriving at the taxable income for the purpose of income-tax. It was decided in the case of *Jyoti Prasad Singh Deo*<sup>(1)</sup> that income derived from royalties came within section 12 of the Income-tax Act which relates to income derived from "other sources" and not under section 10 which applies to income under the head of "business". The deductions which may be made from the different classes of income mentioned in the Act are stated in detail in the different sections dealing with the different heads of income, and under

(1) (1921) 6 Pat. L. J. 62.

section 12 which applies to the present case it is provided that the tax shall be payable by an assessee under the head "other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies if not included under any of the preceding heads. By clause (2) of the section—and this is the important part of the enactment—such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee. Now the only allowances or deductions which are permissible in the case of income derived from "other sources" referred to in section 12 are those already mentioned in clause (2) of that section, namely, any expenditure incurred solely for the purpose of making or earning any income, profit or gain. It is contended in this case that the deductions leviable under the two Bihar and Orissa Acts to which I have referred are expenditure incurred for the purpose of making or earning such income. The case of the *K. M. Selected Coal Company of Manbhum*<sup>(1)</sup>, was relied on in support of this contention. But the reasons for that decision do not apply in this case. There the assessee was the lessee of the mines and the income taxed was profits derived from business. The local taxes as already stated in such a case are levied on the output or despatches apart from the profits of the business and whether a profit is made or not, and must be taken into account in ascertaining whether there is a profit which is subject to income-tax.

The present case appears to me to be governed by the principle adopted in the earlier case of *Raja Jyoti Prasad Singh Deo*<sup>(2)</sup>. In that case this Court decided that in determining the taxable income derived from royalties, cesses payable under the Cess Acts,

1925.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA

v.  
SHIVA  
PRASAD  
SINGH.

DAWSON  
MILLER,  
C. J.

(1) (1924) I. L. R. 3 Pat. 295.

(2) (1921) 6 Pat. L. J. 62.

1925.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA  
v.  
SHIVA  
PRASAD  
SINGH.

DAWSON  
MILLER,  
C. J.

that is to say road-cess and public works cess, cannot be deducted in arriving at the taxable income under the head of royalties and the only question is whether there is any distinction between the case of a road-cess and the case of the cesses imposed under these two Acts. In that case it was argued, as has been argued here, that the taxes should be deducted in order to ascertain what was the actual income. It was pointed out, however, that the cess was leviable upon exactly the same income as the income-tax itself and, following the case of *Manindra Chandra Nandi v. The Secretary of State for India*<sup>(1)</sup>, which held that income tax could not be deducted in order to ascertain the amount upon which the road-cess was leviable, this Court held that, similarly, you could not deduct the road-cess in order to ascertain the amount upon which the income-tax was leviable because both taxes were imposed upon the same income; and it was there pointed out that the liability to pay the road-cess resulted from the income having been made, and the payment of the cess could hardly be said to form a necessary part in the earning of the income which must come into existence before the liability to cess arises, and, although the payment of cess was a necessary expense arising in connection with the ownership of royalty, it was nevertheless in no sense an expenditure incurred for any purpose incidental to the making of the income. No argument has been adduced before us in this case which distinguishes the case of the cesses imposed under these Acts from the case of road-cess. It seems to me that in both cases the cess is imposed upon exactly the same income and the mere fact that income-tax is also imposed on that income is in itself no reason why the cesses should be deducted in order to ascertain the taxable amount of income any more than it is why the income-tax should be deducted in order to ascertain the amount of cess. I can see no distinction in principle between the present case and the case of *Raja Jyoti Prasad Singh*

(1) (1907) I. L. R. 34 Cal. 257.

*Deo* (1) and in my opinion the Income-tax Commissioner arrived at a proper conclusion in the case which he stated for our opinion.

JWALA PRASAD, J.—The royalties derived by the owners of lands containing minerals give rise to the following taxes:—

- (1) Cess levied under the Cess Act (IX of 1880, B. C.) as amended by the Bihar and Orissa Act I of 1916. That cess is a cess on the annual net profits derived from the mines contained within the *zamindari* in the shape of royalty,
- (2) Cess levied under the Jharia Water-supply Act (Bihar and Orissa Act III of 1914) on royalties derived from mines, and
- (3) A tax under the Bihar and Orissa Mining Settlements (Bihar and Orissa Act IV of 1920) assessed on the local cess payable by the *zamindar* who owns the lands in which the mine is situated.

It is thus clear that the sources of the three taxes are the same, namely, the amount of royalty received by the *zamindar* and each of them is to be assessed irrespective of what is paid under the remaining two Acts. Therefore the payments made with respect to any one of the aforesaid taxes cannot be taken into account in the assessment made for the tax payable under the other Acts. The result is that the taxes payable by the assessee in the present case under the Jharia Water-supply Act as well as the Bihar and Orissa Mining Settlements Act cannot be deducted from the royalty received by him in assessing the tax payable under the Income-tax Act of 1922. I therefore agree with the order of my Lord the Chief Justice.

1925.

INCOME-TAX  
COM-  
MISSIONER,  
BIHAR AND  
ORISSA  
v.  
SHIVA  
PRASAD  
SINGH.

JWALA  
PRASAD, J.