REFERENCE UNDER THE INCOME-TAX ACT, 1922.

Before Dawson Miller, C. J. and Ross, J.

1928.

March, 14.

MAHARAJADHIRAJ OF DARBHANGA

v.

THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.*

Income-tax Act, 1922 (*Act XI of* 1922), *section* 2(*1*)(*c*), *scope of—Commissioner, powers of—landlord's fees whether are " agricultural income "—guest house of wealthy zamindar, whether exempt from taxation.*

To bring the income from a dwelling house within the definition of " agricultural income " under section (1)(*c*), Income-tax Act, 1922, it is enough if it is shown that by reason of the assessee's connection with the land he requires a dwelling house in that vicinity, and it is not open to the Commissioner to consider whether the particular class of house is more or less than the actual requirements of a zamindar in his position.

Fees paid by the transferees of non-transferable occupancy holdings and those paid by the transferees of tenures, known as landlords' fees under section 12, Bengal Tenancy Act, 1885, are " agricultural income " within the meaning of section 2 (*1*) (*a*) and are, therefore, exempt from income-tax.

Meher Bano Khanum v. *Secretary of State for India* (1), followed.

Birendra Kishor Manikya v. *Secretary of State for India*(2), not followed.

The facts of the case material to this report are set out in the following statement of the case by the Commissioner of Income-tax.

As directed by the Hon'ble Judges of the High Court, Patna, in their order under section 66 (3) of the Indian Income-tax Act, in

* Reference by W. Johnston, Esq., I.C.S., Commissioner of Income-tax, Bihar and Orissa, dated the 30th June, 1925, and 26th January, 1926.

(1) (1926) I. L. R. 53 Cal. 34. (2) (1921) I. L. R. 48 Cal. 766.

Miscellaneous Judicial Case no. 47 of 1926, dated the 9th April 1926, I submit the following two points for decision of the court:—

1928.

MAHARAJADHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

(1) Whether the annual value of the building standing in the *compound* of the assessee (Maharajadhiraj of Darbhanga) ordinarily known as Chatra Bhawan, is chargeable to income-tax, or, whether, on the other hand, it is exempted under the provision of section 2 (1) (c) read with section 4 (3) (*viii*) of the Act.

(2) Whether nazar or salami paid by the raiyats to the landlord in consideration of the latter's recognising the transfer of a holding which is not legally transferable or the legality of the transfer of which is doubtful is agricultural income and is accordingly exempt from tax by virtue of the provision of section 2 (1) (*a*) read with section 4 (3) (*viii*) of the Act and similarly whether landlords' fees realised by the landlord under the provision of section 12 of the Bengal Tenancy Act are agricultural income and accordingly not chargeable to tax.

2. The Chatra Bhawan is one of 3 blocks of buildings standing in a compound in Darbhanga, the other two buildings in this compound being the Moti Mahal and the Anandbagh palace, the latter being used at the present time as the central zamindari office while in a compound west of this and across a public road lies the palace proper ordinarily occupied by the assessee, his private office in a separate block, and the palaces of two Dowager Maharanis.

3. There is nothing on record to show when the Chatra Bhawan was built, or for what object it was built but it is not denied that it was at one time occupied as a school house by the sons of the assessee and the very name would appear to suggest that this was the object for which it was built, Chatra Bhawan meaning, I am told, the abode of the students. On the other hand, it has been explained by an agent of the assessee that this building is so-called after one Chatra Singh, an ancestor of the assessee.

4. The building is expensively furnished in European style and has been used for the accommodation of European guests of high rank and this would appear to be the purpose to which it is ordinarily put at present, the result being that frequently the building lies vacant for considerable periods.

5. If the valuation of the building in question is to be exempted from income-tax, the following conditions must be fulfilled:—

(1) It must be owned and occupied by the receiver of the rent or revenue of agricultural land.

(2) It must be on or in the vicinity of such land.

(3) It must be a building which the receiver of the rent by reason of his connection with the land requires as a dwelling house or as a store house or other out-building. [Section 2 (1) (*c*) of the Act.]

1928.

MAHARAJA-DHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

6. It is not denied that this building is owned and occupied by the assessee who is a receiver of rent, but it is the contention of the department that it is not occupied by him qua receiver of rent as is explained below in paragraph 8.

7. The next question is whether the building is on or in the immediate vicinity of the land, the rent of which he receives. In this connection, it is reported by the Income-tax Officer who has been specially asked to report on this point that though the assessee's agricultural land totals lacs of bighas, the total area of agricultural land within the range of 2 miles of the palace is only 400 bighas including both raiyati and zeraet land.

8. The real point at issue appears to me, however, to be whether the building in question is required by the assessee as a dwelling house, or as a store house or other out-building by reason of his connection with the land. If it is argued that this building really forms part of the assessee's residence but is built as a separate block primarily for the accommodation of European guests because the social customs of the community to which the assessee belongs prevent him from accommodating such guests in the same building as that in which he himself resides, then this appears to me to raise the larger question, namely, whether the valuation of the whole of the residence of a zamindar should be exempted from income-tax regardless of the relative value of that building and his income from landed property. This is a point on which the decision of the High Court is respectfully invited.

I can perhaps make the problem clearer by two illustrations. If a person, whose income derived exclusively from zamindari does not exceed say Rs. 5,000 per annum has a weakness for erecting a palatial residence with the result that in course of time from his savings he has erected a residence worth say half a lakh of rupees, can he in this case claim exemption in respect of the valuation of that building merely because his income is derived exclusively from zamindari, though there is no reasonable proportion between his annual income from zamindari and the valuation of the building. To take another case; if an assessee has an income of say 5 lakhs from zamindari and one lakh from investments, can he claim exemption in respect of all the buildings on or near the estate on the ground that they are required exclusively for agricultural purposes. It is respectfully submitted that he cannot, and the question which arises, namely, the question on the valuation of what buildings or on the valuation of what proportion of the total building or buildings he should be assessed, is a question of fact to be decided in each case, regard being had in coming to a decision to the provisions of the proviso to 2 (1)(*c*) of the Act and in particular to the point whether the building in question or the whole of the building is required by reason of assessee's connection with the land.

9. Now, the assessee, in this case, does not derive his income exclusively from agriculture and indeed he has been exempted in respect of the valuation of a portion of his Calcutta house on the ground that that house is partly required by him for business purposes.

The case of the department then is that if this building called Chatra Bhawan is required by him, it is not required by him in his capacity as a zamindar or by reason of his connection with agriculture but really by virtue of the position which he holds as a person of great wealth and social position. It is submitted that the assessee has a considerable business in stocks in shares and this business is carried on by him largely from Darbhanga.

10. The building in question is admittedly not required as a store house.

11. The next question for consideration is whether it is required as an out-building. Presumably, the expression out-building refers to servants' quarters, stables, garage or other buildings of this nature situated at a distance from a main building and subsidiary to it. If this view is correct, this building cannot be classed as an out-building.

12. The next question for decision is whether nazrana or salami paid to a landlord by the raiyat in consideration of the former's recognising a transfer of holding the transfer of which is not recognised by the law or is of doubtful legality is agricultural rent.

13. I understand that in a reference of this sort a full statement of the facts is considered to be my primary duty. In this specific case, however, the formulation of the question appears in itself to state all the facts and it is difficult to add any thing of value.

14. These payments are made under the circumstances noted in formulating the question. They are not payments made under any section of the Bengal Tenancy Act and they are admittedly not rent as defined in that Act and the question at issue is whether they are revenue as described in section 2 (1) (*a*) of the Income-tax Act. This point, as the court is no doubt aware, has already been discussed on two occasions in the Calcutta High Court and while in the former case (1), it was held that such nazar was not agricultural income but was the price paid to the landlord to purchase peace, in the Reference case no. 5 of 1924(2) it was held by a Full Bench that such nazar or salami is revenue and is profit of the land and flows from the ownership thereof, and is accordingly not taxable. Where judges disagree I must naturally express an opinion with some diffidence. Unfortunately, we have no definition of revenue in any Legislative Enactment, but in the latter case referred to above, the learned Judges appear to have based their conclusion that nazar was revenue on the definition of revenue as given in the Oxford Dictionary, namely, "the return yield or profit of any land property or other important source of income; that which comes into one as a return from property or possessions, specially of an extensive kind; income from any source specially of an extensive kind; income from any source but specially when large and not directly earned". They held that this nazar is money which comes to the landlord by virtue of the fact that he is the owner of the

(1) (1921) I. L. R. 48, Cal. 766; 1 I. T. C. 67.

(2) (1926) I. L. R. 53, Cal. 34; 2 I. T. C. 99.

1928.

MAHARAJA-DHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

land and viewed in this light, it clearly is derived from the land and is agricultural income. I would respectfully urge that if revenue is taken in this wide sense, the result would be to include within the meaning of agricultural income illegal realisations or abwabs which a landlord realizes by virtue of his position as a landlord, though these are neither agricultural rent nor revenue, while royalty derived from minerals would also be on this view non-taxable, if the surface of the land from which the minerals were mined was used agriculturally as is often the case. It is submitted therefore that the learned Judges in that case have accepted much too wide a definition of the word "revenue."

15. The next question for consideration is whether landlord's fees received by a landlord are taxable or not. These fees are realized under section 12 (2) of the Bengal Tenancy Act. They are realized by the registration officers from the party on the occasion of the registration of a transfer of a tenure and are fixed on a percentage basis of the annual rent of the tenure. These fees are obviously not rent as defined in the Tenancy Act and the question for decision is whether they are revenue derived from land. They are not derived directly from the land and the real question here as in the case of nazar discussed above would appear to be whether revenue is to be defined in the very wide sense in which it is defined in the Oxford Dictionary. My view is that the correct way to view these receipts is to hold that they are not rent or revenue derived from land but are payable by a tenure-holder under a liability incidental to the ownership of the tenure.

Pugh (with him *Sir Sultan Ahmad, K. P. Jayaswal* and *Anirudhaji Barman*) for the assessee.

A. B. Mukharji, Government Pleader (for *C. M. Agarwala*), for the Crown.

DAWSON MILLER, C. J.—Two questions arise for determination in this case which comes before us upon a case stated by the Commissioner of Income-tax under section 66, sub-section (*3*) of the Indian Income-tax Act, 1922.

The first point, in the order in which they are dealt with in the case stated by the Commissioner, is whether the annual value of a guest-house standing in the compound of the assessee at Darbhanga is exempt from income-tax under the provisions of the Act on the ground that it is "agricultural income" within the meaning of section 2, sub-section (*1*), clause (*c*), of the Act. If it falls within that section then it is exempt under section 4, sub-section (*3*), clause (*viii*) as being agricultural income. Under section 2, sub-section, (*1*) (*c*), agricultural income for

the purposes of the Act includes any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land (that is, agricultural land) provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of rent or revenue by reason of his connection with the land requires as a dwelling-house or as a store-house or other out-building. The Commissioner has found the facts relating to the house in question from which it appears that the house stands in the same compound as the principal dwelling-house or palace of the Maharajadhiraj of Darbhanga at Darbhanga. It is used principally for accommodating European guests when they visit him. This, I apprehend, would include not only such guests as might arrive on social occasions but all such as had reason to visit the Maharajadhiraj officially or on business connected with his estate which is of vast dimensions. The Commissioner has taken the view that under section 2, sub-section (*1*) (*c*), of the Act such a house can only be exempt if and in so far as it does not exceed the necessary requirements of the assessee having regard to the position which he holds by reason of being a zamindar deriving his income from land. The view he has expressed is that if in fact he has other sources of income, then this is a matter to be taken into consideration, for income derived from such sources may make him a person of some importance and social position and therefore he may require a larger house than would be the case were he merely a zamindar. He has then considered whether it is necessary for him to have a guest house at all by reason of the fact that he is the zamindar of the Darbhanga Raj, and as I understand the findings the conclusion he comes to on that part of the case is that he does not require this guest house as a zamindar but merely because he is a person of great wealth and social position. It is perhaps not irrelevant to observe that the wealth and social position of the assessee arise from the fact that he is the proprietor of the Darbhanga Raj the

1928.

MAHARAJA-DHIRAJ OF DARBHANGA *v.* THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

DAWSON MILLER, C.J.

largest zamindari in this province and perhaps one of the largest in India. The way the Commissioner puts the case is this:

"Now the assessee in this case does not derive his income exclusively from agriculture and indeed he has been exempted in respect of the valuation of a portion of his Calcutta house on the ground that that house is partly required by him for business purposes. The case of the department then is that if this building called Chatra Bhawan is required by him, it is not required by him in his capacity as a zamindar or by reason of his connection with agriculture but really by virtue of the position which he holds as a person of great wealth and social position. It is submitted that the assessee has a considerable business in stocks and shares and this business is carried on by him largely from Darbhanga."

From that it may be assumed, I think, that the finding of the Income-tax Commissioner was that the house was not required as a dwelling-house by the assessee within the meaning of section 2, sub-section (*1*)(*c*), of the Act, because his income was not derived exclusively from zamindari but also from other sources. In fact it appears from his statement of the case that the Commissioner would consider in each individual instance whether a dwelling-house owned and occupied by a landowner was in fact larger or more commodious than might be considered necessary for his requirements as a landowner, and if he should consider that it was, then he would assess a certain proportion of the annual value of his house to income-tax. That proportion would depend, according to the view taken by the Commissioner, upon the relation between the assessee's income derived from his estate and that derived from other sources, and would necessarily vary from time to time as his savings increased or diminished. It is not disputed that the building is owned and occupied by the assessee and as I understand the findings of the Commissioner it is conceded that the Maharajadhiraja of Darbhanga as the zamindar of a large Raj does require a dwelling-house in that locality by reason of his connection with land; and further it is not disputed, as I understand it, that the building is on or in the immediate vicinity of the land forming the Darbhanga Raj. It is also a matter of

common knowledge that amongst persons of the religion to which the Maharajadhiraja belongs it is not convenient to accommodate his guests within his own dwelling-house, and therefore for this purpose there is a separate house set apart near his principal dwelling-house for their accommodation and in this respect I consider that the matter must be approached from the point of view that it makes no difference whether the guest-house is really a part of the main dwelling-house itself or is structurally unconnected with it. It is by no means unusual in this country, especially in the case of large and even moderately large houses, to find a guest house attached thereto.

The question which we have to decide is not, in my opinion, purely one of fact. It has been argued on behalf of the Commissioner that this really is a question of fact of which he is the sole judge, but in dealing with the matter it seems to me that he has not properly construed the section, and has applied a test to this case which is not the proper test to be applied. If the Commissioner's view is to be accepted then he would be equally entitled to consider in each case whether a particular house owned by a zamindar, for which exemption from tax was claimed, was larger than was actually sufficient to supply his needs having regard to the fact that he was a zamindar. It would be for the Commissioner to say whether he was entitled to this or that extra room, whether he was entitled to have stables, for example to accommodate so many horses, and in each case if the question is to be regarded merely as one of fact the Commissioner would be the sole judge whether the house was or was not sufficient for the minimum requirements of the assessee. That to my mind is not the intention of the Act. I have referred to the terms of the section, and in my opinion the proper construction is this. Once it is shown that by reason of the assessee's connection with the land he requires a dwelling-house in that vicinity then we are not concerned to enquire whether the dwelling-house is more commodious than other persons in the same position

1928.

MAHARAJA-DHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

DAWSON MILLER, C.J.

would consider sufficient for their actual needs, a matter about which opinion might widely differ. The intention of the Act seems to me to have been that if by reason of his connection with the land the assessee does require a dwelling-house, and it is admitted in this case—at all events no argument has been adduced to the contrary that he does require a dwelling-house in Darbhanga, then the section is complied with in so far as the question of his requirements is concerned, and it is not open to the Commissioner to consider whether the particular class of house is more or less than the actual requirements of a zamindar in his position according to some standard which may vary from time to time in the opinion of different Income-tax Commissioners. For these reasons I think that upon the facts found it must be held that a dwelling-house being required in this place, and the house in question being regarded as part and parcel of such a dwelling-house, and it being also admitted that the dwelling-house is required by reason of the connection of the assessee with the land, then the provisions of the section are complied with and the assessee, in my opinion, is exempt from tax.

The next point is one which has recently been the subject of a decision of a Full Bench of the Calcutta High Court. Stated shortly the point is whether what is called mutation fees, that is to say fees paid by the transferee of a non-transferable occupancy holding and fees paid by the transferee of a tenure, known as landlord's fees, under section 12 of the Bengal Tenancy Act are exempt as being included in the definition of agricultural income in section 2 of the Act. The definition there contained includes amongst agricultural income 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 Government as such. It is not disputed here that the land in question comes within the description mentioned in that section.

The contention is however that the fees derived from the sources which I have mentioned will not come under the description of rent or revenue derived from land. The contention on behalf of the Crown is that, at all events in the case of fees paid by the transferee of a non-transferable occupancy holding, these are not in any sense of the word rent or revenue derived from land; they do not arise out of the creation of a new tenure in which case sometimes a premium or salami is paid in advance which may be taken to represent a consolidated sum of rent in addition to the annual rent payable, but it is said that the money is something in the nature of damages for a breach of contract or, as stated in the judgment of Mookerjee, J., in *Birendra Kishor Manikya* v. *Secretary of State for India* (1), money paid in order to secure peace and therefore not to be regarded as revenue derived from land. The case to which I have just referred was the subject of consideration in the later case of *Meher Bano Khanum* v. *Secretary of State for India* (2). In that case the decision of Mookerjee, J., in the earlier case was overruled and it was held that salami or nazar paid by a tenant to a landlord for his recognition as a tenant of a non-transferable holding is rent or revenue within the meaning of section 2(*1*)(*a*) of the Indian Income-tax Act and is therefore exempt from taxation. The real question I think for determination upon this part of the case is whether these fees paid by the tenants are to be regarded as income or revenue derived from land. Whether they be something in the nature of damages, although that clearly is not an appropriate term to use in this connection, or whether there is any breach of contract by the transferee, or whether they may be regarded as something paid for the purchase of peace, seems to me to be altogether beside the question. It may just as appropriately be said that rent itself, when it is in

1928.

MAHARAJADHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

DAWSON MILLER, C.J.

(1) (1921) I. L. R. 48 Cal. 766; 1, I. T. C. 67.

(2) (1926) I. L. R. 53 Cal. 34, 2 I. T. C. 99.

1928.

MAHARAJA-DHIRAJ OF DARBHANGA v. THE COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

DAWSON MILLER, C.J.

arrears, or when there is any dispute about the liability to pay it, may be paid to purchase peace, and so here it is undoubtedly a fact that, just as in the case of rent, the sum is payable by a tenant to his landlord solely by reason of their relationship as tenant and landlord of land and whether it has the effect of purchasing peace or not seems to me to be entirely immaterial to the question under consideration. It arises by reason of the tenant being given the use and occupation of the land which without it he could not acquire. The term 'revenue' as given in the Oxford Dictionary has been set out at length in the judgment of the Full Bench of the Calcutta High Court to which I have just referred. It is unnecessary to repeat it, but it seems to me that it clearly includes payments of this nature and according to the ordinary general use of the term I think also that it must include payments by the tenants of land owned by the landlord for the transfer to them of holdings or tenures, and I entirely agree with the conclusions arrived at by the majority of the Court in the case of *Meher Bano Khanum* v. *Secretary of State for India* (1.) That this particular class of revenue is derived from land I do not think for a moment can seriously be disputed. These payments are so intimately connected with the ownership of land and are payable by the tenants in the same way as rent is payable that to my mind it is impossible to come to any other conclusion than that they are revenue derived from land.

For these reasons I think that upon both these points the assessee is entitled to exemption from tax.

This opinion may be forwarded to the Income-tax Commissioner for his guidance.

ROSS, J.—I agree.

(1) (1926) I. L. R. 53 Cal. 34; 2 I. T. C. 99.