

**REFERENCE UNDER THE INCOME-TAX
Act, 1922.**

1938.

FULL BENCH.

November,
29.

Before Courtney Terrell, C. J., Kuluwant Sahay and James, JJ.

COMMISSIONER OF INCOME-TAX

v.

MANAGER, KATRAS ENCUMBERED ESTATE.*

Income-tax Act, 1922 (Act XI of 1922), section 6—mortgage of mine by proprietor and subsequent lease of the mortgaged property to mortgagee—minimum royalty payable to proprietor—balance to be applied towards payment of mortgage debt—whole of the royalty, whether is “income” of the assessee.

The predecessor-in-interest of the assessee, a proprietor of a certain mine producing coal and fire-clay, owed a sum of four lakhs of rupees to a company. By the 15th March, 1921, the amount due to the company including the first loan and a subsequent loan amounted to Rs. 12,19,017 and to secure the repayment of this sum the proprietor mortgaged the mine to the company on that date. On the same day the proprietor executed a lease of the mine to the same company at a royalty and it was provided that a minimum sum of Rs. 8,000 a year was to be paid to the proprietor himself. The balance of such royalty as might be payable was to be applied by the mortgagees to the liquidation of their debt under the mortgage.

Held, that the whole of the royalty must be considered to be the income of the assessee and, therefore, assessable to income-tax.

Raja Bejoy Singh Dudhuria v. The Commissioner of Income-tax, Calcutta(1), distinguished.

Reference under section 66(2) of the Income-tax Act.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

K. P. Jayaswal (with him *S. M. Gupta* and *C. S. Jayaswal*), for the assessee: So much of the royalty as is not received by me is not income within the meaning of the Income-tax Act.

* Miscellaneous Judicial Case no. 157 of 1932.

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I rely on *Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax, Calcutta*(¹), where the amount received by the lady and not coming into the pocket of the assessee was exempted from taxation.

[*Kulwant Sahay, J.*—It is quite a different case.]

Manohar Lal, for the Commissioner of Income-tax, not called upon.

S. A. K.

COURTNEY TERRELL, C.J.—This is a case stated under section 66, sub-section (2) of the Indian Income-tax Act for the opinion of the Court.

The facts which have given rise to the case are simply stated: The assessee is the proprietor of a certain mine producing coal and fire-clay. In the month of June, 1920, the late proprietor of the mine owed a sum of four lakhs of rupees to a company. By the 15th March, 1921, the amount due to the company including the first loan and a subsequent loan amounted to Rs. 12,19,017 and to secure the repayment of this sum the proprietor mortgaged the mine to the company on that date. On the same day the proprietor executed a lease of the mine to the same company at a royalty and it was provided that a minimum sum of Rs. 8,000 a year was to be paid and that that sum of Rs. 8,000 was to be paid to the proprietor himself. The balance of such royalty as might be payable was to be applied by the mortgagees-lessees to the liquidation of their debt under the mortgage. The question is as to whether the entire royalty to be paid by the lessees is to be taxed when it comes into the hands of the proprietor as his income.

The argument has been raised on behalf of the assessee that inasmuch as all excess of royalty over and above Rs. 8,000 was retained by the lessee-mortgagees and did not come into the hands of the

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assessee, it could not be considered as income and reliance was placed upon the judgment of the Privy Council in *Raja Bejoy Singh Dudhuria v. The Commissioner of Income-tax, Calcutta*(1). In that case the assessee had inherited an estate, the income of which was charged with a payment to his mother and it was held that the amount of the income payable to the lady was not part of the income of the assessee. It was specifically stated in the judgment of their Lordships that it was not a case of the application by the assessee of part of his income in a particular way, but it was a case of the allocation of the sum out of the revenue before it became the income of the assessee. Inasmuch as the assessee owed a sum of money to the lessee he stipulated that the lessee instead of paying the whole of the royalties direct to him should use a part of the royalties in discharging the debt which was owed by the assessee to the lessee. The whole, therefore, of the income was the income of the assessee. The position does not in the least differ from what it would have been had the provision been that the lessee was to pay the whole of the royalty direct to the assessee and then that the assessee was to pay back a portion of the royalty to discharge his debt to the lessee. It is clear that in such a case the whole of the income would have to be considered as the income of the assessee and the case in question does not differ from that in its nature.

In our opinion the assessee has rightly been assessed in respect of the income in question. The assessee must pay the costs of this enquiry. Hearing fee five gold mohurs.

KULWANT SAHAY, J.—I agree.

JAMES, J.—I agree.

Order accordingly.

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