REFERENCE UNDER THE INCOME-TAX ACT, 1922.

Before Terrell, C. J. and Dhavle, J.

MAHARAJADHIRAJA OF DARBHANGA

v.

COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.*

1930.

July, 24.

Income-tax Act, 1922 (*Act XI of* 1922), *section* 9(*1*), *paragraphs* (*VI*) *and* (*VII*)—" *vacancies* ", *meaning of—house in occupation but unused, whether allowance should be given for—collection charges to be deducted when actually incurred.*

Section 9(*1*), paragraph (*VII*), Income-tax Act, 1922, is intended to apply primarily to those cases only in which the house in question is not in the occupation of the owner but is habitually let to tenants and the " vacancies " referred to are vacancies between the different tenancies. It may also be applied to cases where a house though not let is dismantled and shut up by the owner; but it does not apply to a case where the house though in occupation of the owner has remained unused.

Held, therefore, that allowances cannot be given in respect of vacancies under section 9 of the Act in fixing the annual value of house not used by the assessee during the year.

Held, further, that under paragraph (*VI*) of the section collection charges cannot be deducted unless they have actually been incurred, and in that case the sum which may be deducted is limited to a sum " not exceeding the prescribed maximum ".

Reference under section 66(*2*) of the Income-tax Act, 1922.

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

*Miscellaneous Judicial Case no. 34 of 1929. Reference under section 66(*2*) of the Income-tax Act of 1922, made by the Commissioner of Income-tax, Bihar and Orissa, dated the 10th April, 1929.

1930.

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

K. P. Jayaswal and *Murari Prasad*, for the assessee.

C. M. Agarwala, for the Commissioner of Income-tax.

COURTNEY TERRELL, C.J.—Various points are raised by this Letter of Reference. As to some no decision is called for by us because the learned Assistant Government Advocate states that the department is prepared in future to accept a certain view of the law with which view the assessee is in agreement, and as to some a compromise has been effected and, therefore, we were not troubled to come to any decision. The remaining two points are of a very simple character.

The assessee is a wealthy nobleman of this province and he has in various parts of the country residential houses which he keeps open for his occupation and residence at any time he might choose. He is not in the habit of letting any of these residences to tenants but keeps them furnished so that if at any moment he may choose to enter into residence he is free to do so. As to some of the residences he has not resided in them during the year of assessment, nor has he used them for purposes of hospitality.

The first point arises by reason of the claim on behalf of the assessee under section 9(*1*), paragraph (*VII*) of the Act to make a deduction from the annual value of the particular houses of a sum in respect of the periods during which he did not use them for purposes of residence, and he claims that such periods should be included in the term ' vacancies ' in that paragraph. It is argued on his behalf that a house may well be occupied (and it is admitted that in this case the houses in question are and have been in his occupation) but that a house although it may be occupied may nevertheless be vacant. In my opinion the contrasting terms are " occupation " on the one hand and " non-user " or " unused " on the other,

and a house, although it may be occupied, may in certain circumstances, be unused but it cannot be occupied by the owner and at the same time be vacant. In my opinion the provision in section 9(*1*), paragraph (*VII*) is intended to apply primarily only to those cases in which the house in question is not in the occupation of the owner but is habitually let to tenants and the vacancies referred to are vacancies between the different tenancies. It may also be applied to cases where a house though not let is dismantled and shut up by the owner but it has no application to the circumstances of the present case.

The first question put to us is " Whether under the law allowances are to be given in respect of vacancies under section 9 of the Act in fixing the annual value of houses not used by the assessee during the year ". I would answer this question in the negative.

The second question submitted to us is whether the assessee was entitled to deduct a sum from the annual value as collection charges under paragraph (*VI*) of sub-section (*1*) of section 9. It is argued that inasmuch as sub-section (*2*) of the Act defines the

' annual value of the house as the sum for which the property might reasonably be expected to let from year to year '

and that that is in the nature of notional income, the assessee should be entitled to deduct from such notional income measured by the value for letting purposes a sum which should represent the cost of collecting the rent if the house were so let. But the answer to this contention is, in my opinion, that even in the case of a house which is in fact let, the proper construction of paragraph (*VI*) is that collection charges may not be deducted unless they have actually been incurred, and in that case the sum which may be deducted is limited to a sum ' not exceeding the prescribed maximum '. Analogy may be found for this reasoning from the construction of paragraph (*III*) which allows the deduction of any annual

1930.

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

COURTNEY TERRELL, C.J.

premium paid to insure the property against risk of damage or destruction. It is quite clear in this case that the premium could not be deducted unless it had been actually paid. Similarly in respect of paragraph (*IV*) which allows the deduction of interest on mortgages or charges, the deduction may not be made unless either the interest on the mortgage or charge has actually been made or unless the assessee is under a legal liability to pay the interest. I would, therefore, answer the question put to us " whether allowance of collection charges is to be made in respect of residential houses in fixing their annual value under section 9 of the Act " in the negative.

These two points conclude all the matters with which we have had to deal in this reference.

We award Rs. 100 as costs to the opposite party.

DHAVLE, J.—I agree.

APPELLATE CIVIL.

Before Fazl Ali and Chatterji, JJ.

1930.

July, 18, 21, 25.

RAMDHARI RAI

v.

GORAKH RAI.*

Abandonment—what constitutes—question of fact—inference drawn from facts found, whether question of law—suit by tenant for possession—settlement with defendant by landlord after the former had entered into land on his own account—suit, whether governed by Article 3, *Schedule III, Bengal Tenancy Act*, 1885 (*Act VIII of* 1885)—*title, whether passes on execution of sale-deed.*

In order that there might be an abandonment within the meaning of section 87 of the Bengal Tenancy Act, 1885, it

*Appeal from Appellate Decree no. 1037 of 1928, from a decision of Babu Krishna Sahay, Subordinate Judge of Chapra, dated the 4th April, 1928, reversing a decision of Babu Bhuban Mohan Lahiri, Munsif of Chapra, dated the 15th February, 1927.