

1936

humbly advised His Majesty that this appeal should be dismissed.

NAYAT KHAN
v.
THE KING-
EMPEROR.

C. S-S.

*Appeal dismissed.*Solicitors for the appellant: *Rising & Ravenscroft.*Solicitor for the respondent: *The Solicitor, India Office.***FULL BENCH.**

*Before Young C. J., Coldstream, Monroe, Skemp,
Bhide, Currie and Abdul Rashid JJ.*

1936

LALLA MAL-SANGHAM LAL (ASSEESSEES)

Petitioners

versus

COMMISSIONER OF INCOME-TAX, PUNJAB—

Respondent.

*April 30.***Civil Reference No 72 of 1935.**

*Indian Income-tax Act, XI of 1922, section 9 (1) (2) —
'Annual value' — Tenant agreeing to pay the Municipal Tax
payable by the landlord — whether such payments must be
included in arriving at the 'annual value.'*

The assessee was the owner of certain houses in Delhi the which house-tax was payable, under the provisions of Punjab Municipal Act, by the landlord. By an agreement between the landlord-assessee and his tenant the latter to pay the amount of the Municipal house-tax in addition to the sum reserved as "rent."

Held, that in estimating the 'annual value' or the sum for which the property might reasonably be expected to let from year to year, the amount paid by the tenant of tax petitioner on account of the Delhi Municipal house-tax should be included, that is, should be treated as part of the rent payable by the tenant to the landlord.

The amount of rent payable by the tenant to the landlord is, however, only *prima facie* evidence of 'annual value' and a consideration of the rents paid for similar and similar

situated properties in the locality may show the 'annual value' in any particular instance to be less or more than the rent actually paid.

In the matter of Krishna Lal Seal (1), followed.

Chhuna Mal-Salig Ram v. Commissioner of Income-tax (2) over-ruled, and the dissenting judgment of Addison J., in that case, approved.

Nundo Lal Bose v. The Corporation for the Town of Calcutta (3), distinguished.

Case referred under section 66 (2) of the Indian Income-tax Act, by Mr. A. M. Bown, Commissioner of Income-tax, Punjab, with his No.S.7/OL35, dated 13th November, 1935, for orders of the High Court.

BADRI DAS, NAWAL KISHORE and R. W. TANDON,
for Petitioners.

JAGAN NATH AGGARWAL, S. M. SIKRI and M.
ASLAM KHAN, for Respondent.

(The case was referred to a Full Bench by Addison and Abdul Rashid JJ., on 10th February, 1936).

The referring order was delivered by—

ADDISON J.—Under section 66 (2) of the Indian Income-tax Act the Commissioner of Income-tax, Punjab, has referred the following two questions of law to this Court, namely :—

(1) Whether the enhancement of income from the property from Rs.50,088 to Rs.51,802 by the Assistant Commissioner is legal?

(2) Whether the house-tax paid by the tenants of the petitioner on account of Delhi Municipal house-tax is to be included to arrive at 'the annual value'?

1936

LALLA MAL-
SANGHAM LAI

v.

COMMISSIONER
OF INCOME-TAX

(1) (1933) I. J. R. 60 Cal. 357 (F.B.). (2) (1931) 5 I. T. C. 316:

(1885) I. L. R. 11 Cal. 275.

131 I. C. 193 (F. B.).

1936

LALLA MAL-
SANGHAM LAL
v.
COMMISSIONER
OF INCOME-TAX.

As the two questions are inter-dependent and as the Commissioner has asked that the second question should be referred to a Full Bench in view of conflict of authority we have come to the conclusion that this case should be referred to a Full Bench with the permission of the Hon'ble Chief Justice.

The second question has already been before a Full Bench of this Court. [See *Chhuna Mal-Salig Ram v. Commissioner of Income-tax* (1)]. I was a member of that Bench. I was inclined to hold that the question was one more or less of fact but, if it was to be considered a question of law, it should be answered in the affirmative. Three Judges, namely, Tek Chand, Jai Lal and Agha Haidar, JJ. were of the view that it should be answered in the negative, while Dalip Singh J. was of opinion that the question was one of fact. The question was, therefore, answered in the negative on the view taken by the majority of three Judges to two.

The same question came before a Full Bench of three Judges, including the Hon'ble Chief Justice of the Calcutta High Court shortly afterwards. [See *In the matter of Krishna Lal Seal* (2)]. This Bench dissented from the decision of this Court, the principal portion of the judgment being set out in the order of the Commissioner stating this case. It is on account of this divergence of opinion that the Commissioner has asked that it should be referred again to a Full Bench of this Court. I still hold the same view as I took in the former Full Bench of this Court, namely, that the answer to the second question should be in the affirmative. My learned brother agrees that this is a fit case again to be referred to a Full Bench.

(1) (1931) 5 I. T. C. 316 (F.B.). (2) (1933) 6 I. T. C. 293 (F.

For these reasons we would refer the two questions to a Full Bench if the Hon'ble Chief Justice agrees.

1936

LALLA MAL-
SANGHAM LAL
v.
COMMISSIONER
OF INCOME-TAX

The judgment of the Full Bench was delivered by—

YOUNG C. J.—This is a reference by the Commissioner of Income-tax under section 66 (2) of the Indian Income-tax Act. The reference came before a Bench of this High Court, but in view of a conflict of authorities it was referred by the Bench to the Chief Justice for formation of a Full Bench. As the questions referred to had already been decided by a Full Bench of five Judges this Bench has been formed consisting of seven Judges none of whom have expressed an opinion upon the point.

The assessee is the owner of certain houses in Delhi for which house-tax is payable under section 61 of the Punjab Municipal Act. By a written agreement between the assessee and a tenant, the tenant agreed in addition to the sum reserved as 'rent' to pay the amount of tax which under the provisions of the Municipal Act is a tax payable by the owner, that is, in this case the assessee. The Income-tax Officer has assessed the property of the landlord under section 9 of the Income-tax Act. The material portion of section 9 (1) runs as follows :—

“ 9 (1). The tax shall be payable by an assessee under the head 'Property' in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner
* * * *”

Section 9 (2) is as follows :—

“ 9 (2). For the purposes of this section, the expression 'annual value' shall be deemed to mean the

1936

LALLA MAL-
SANGHAM LAL
v.
COMMISSIONER
INCOME-TAX.

sum for which the property might reasonably be expected to let from year to year;

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner."

The Assistant Commissioner for Income-tax included both amounts, that is the amount reserved as rent and the Municipal tax, paid by the tenant on behalf of the landlord, for the purpose of ascertaining the annual value of the premises. The assessee objected to this procedure on the authority of the Full Bench decision of this Court reported as *Chhuna Mal-Salig Ram v. Commissioner of Income-tax* (1).

Two questions were referred to this Court. The first question was submitted at the request of the assessee and *Rai Bahadur* Badri Das on his behalf now does not press this point and withdraws the reference with regard to it.

The second question on which we are invited to express an opinion is as follows :—

" Whether the house-tax paid by the tenants of petitioner on account of Delhi Municipal house-tax is to be included to arrive at ' the annual value ' ? "

In our opinion the question to be answered is a simple one. We have merely to construe section 10 of the Act. ' Annual Value ' in the sub-section is clearly defined as " the sum for which the property might reasonably be expected to let from year to year that is, the sum for which the landlord could let the premises having regard to local conditions and

(1) (1931) 131 I. C. 193: 5 I. T. C. 316 (F.B.)

demand for houses in that particular district. The strongest evidence of the sum for which the property might reasonably be expected to let is clearly in our opinion the sum which a tenant would be prepared to pay. It would make no difference what the amount paid to the landlord, or to his use, by the tenant for the right to use the premises was termed. No tenant would in ordinary circumstances pay more than the actual letting value of the premises. If for example there were two houses situated in the same district on the same kind of land and built in the same way, for one the landlord might demand Rs.110 rent per month; for the other the landlord might demand Rs.100 rent and insert a condition in the lease that the tenant should pay Rs.10 per month, the amount due by the landlord to the Municipality. It appears to us that there can be no distinction between the two cases. In both Rs.110 a month would be the sum for which the property might reasonably be expected to let.

It is argued in this case that the amount specified to be paid on account of the Municipal tax cannot be included in the sum for which the property might reasonably be expected to let as it was a tax payable by the landlord and that the 'annual value' would be the net profit which the landlord actually kept in his own pocket. The basis of the argument is taken from the judgment of Mr. Justice Tek Chand in the Full Bench case already referred to, where he quoted the words used by Mr. Justice Wilson in *Nundo Lal Bose v. The Corporation for the Town of Calcutta* (1), that the 'annual value of a house' must mean the "annual money benefit derivable from it by the owner." In our opinion, this definition of 'annual

1936

LALLA MAL-
SANGHAM LAI
v.
COMMISSIONER
OF INCOME-TA

(1) (1885) I. L. R. 11 Cal. 275.

1936

JALLA MAL-
 ANGHAM LAL
 v.
 COMMISSIONER
 INCOME-TAX.

value ' can have no relation to the question before us. ' Annual value ' in section 9 of the Income-tax Act is clearly defined. It is not said there that the ' annual value ' means the " annual money benefit derivable from the property." On the contrary it says that it is the sum for which the property might reasonably be expected to let from year to year. If we may respectfully say so, it appears to us that the decision of the majority of the previous Full Bench of this Court was arrived at by considering other Acts or expressions of judicial opinion which had nothing to do with the construction of this sub-section of the Income-tax Act.

If the argument of counsel is correct that the amount payable to the Municipality on behalf of the landlord by the tenant cannot be included for the purpose of arriving at the annual value, there would be nothing to prevent the landlord making an arrangement for the tenant to pay other liabilities of his and so further to reduce the ' annual value.' There does not appear to us to be any distinction between the tax payable to the Municipality and the land revenue payable in respect of the property. The land revenue is by section 9 (v) an authorized deduction. It is clear that if the Legislature had meant to authorize any other deduction of the same kind, it would expressly have been included in the ' allowances.'

We have been referred to a case where the same point arose in a reference to the Calcutta High Court and which is reported as *In the matter of Krishna Lal Seal* (1) which supports our opinion on this question. The reasoning of the learned Chief Justice of the Calcutta High Court in that case appears to us to be

(1) (1933) I. L. R. 60 Cal. 357; 6 I. T. C. 293 (F.B.).

unassailable. The same view was expressed by Addison J. in the dissenting judgment of our own Full Bench referred to above.

We, therefore, answer the reference submitted to us as follows :—

That in estimating the sum for which the property might reasonably be expected to let from year to year, the amount paid by the tenant of the petitioner on account of the Delhi Municipal house-tax should be included, that is, should be treated as part of the rent payable by the tenant to the landlord.

It must, however, be understood that the amount of rent payable by the tenant to the landlord is only *prima facie* evidence of 'annual value,' and a consideration of the rents paid for similar and similarly situated properties in the locality may show the 'annual value' in any particular instance to be less or more than the rent actually paid.

P. S.

Reference answered in the affirmative.

1936

LALLA MAL-
SANGHAM LAL,
v.
COMMISSIONER
OF INCOME-TAX.