Privy Council Appeal No. 90 *of* 1928.
Bengal Appeal No. 26 *of* 1927.

Raja Probhat Chandra Barua - - - - - - - *Appellant*

v.

The King-Emperor - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH MAY, 1930.

Present at the Hearing:
LORD BLANESBURGH.
LORD MERRIVALE.
LORD RUSSELL OF KILLOWEN.
[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The appellant is *zamindar* of the Permanently Settled Estate of Gouripur, and he appeals to His Majesty in Council in the circumstances herein set forth.

By an assessment note of the Income Tax officer of Dhubri dated the 28th August, 1925, the appellant was assessed under the Indian Income Tax Act, 1922, to income tax in respect of income arising from his said estate. On appeal the assessment was confirmed by order of the Assistant Commissioner dated the 22nd December, 1925.

At the request of the appellant the Commissioner of Income Tax, Assam, acting under section 66 of the said Act, submitted certain questions for the decision of the High Court.

The questions so submitted were three in number, and (as amended in the course of the hearing) they were in the following terms :—

> "I. Whether the following sources of income are agricultural and therefore exempted from assessment to Income Tax under Section 4 (3) (viii) of the Act ? [Then follow 10 items which it is unnecessary to set out here.]

"II. Whether income derived from such of the above sources as were not taken into consideration at the time of fixing the Jama at the Permanent Settlement is assessable for income tax purposes ?

"III. Whether, having regard to the terms of the Permanent Settlement Regulation, income derived from land in permanently settled estates, subject to the exemptions provided by the Legislature, is liable to assessment to income tax ? "

In view of a diversity of judicial opinion already existing in regard to the proper answer returnable to the third question, both questions II and III were, by an order of the 21st May, 1926, referred for decision of the Full Bench, the consideration of question I being in the meantime deferred.

The case was argued before the Full Bench consisting of five Judges of the High Court, with the result that Ghose, Buckland and Panton JJ. took one view and Mukerji and Suhrawardy JJ. took a different and opposite view.

The majority of the Judges held that questions II and III should both be answered in the affirmative. In the opinion of the minority, question III should be answered in the negative, from which answer it would follow that question II would not arise.

By order dated the 14th March, 1927, the reference to the Full Bench was disposed of in accordance with the opinion of the majority of the Court.

The remaining question I was decided by the High Court on the 11th May, 1927. The appellant confined his claim for exemption to three items out of the specified ten items, but the High Court held that none of the three items were exempted as agricultural income, and accordingly question I was answered in the negative.

By an order of the High Court dated the 7th November, 1927, the application of the appellant for leave to appeal to His Majesty in Council against the said judgments or orders of the 21st May, 1926, the 14th March, 1927, and the 11th May, 1927, was granted.

It is in these circumstances that the matter came before this Board.

There can be no doubt as to the importance or difficulty of this case, which, in their Lordships' opinion, depends primarily, if not entirely, upon the consideration of question III. It is sufficient to state that the problem of the correct answer to question III has been now considered before different Courts in Madras, Patna and Calcutta by thirteen Judges. As their Lordships read the various decisions, it would appear that five of the thirteen Judges would answer question III in the affirmative and eight would answer it in the negative.

The argument for the appellant on question III was presented to their Lordships in great, but not excessive, detail, and covered a wide ground. It may be summarised thus :—

That at the time of the Permanent Settlement in 1793 definite guarantees and assurances were given by the governing

authority and were embodied in the Bengal Regulations of 1793 (hereinafter alluded to as the Regulations) to the effect that the income of the *zamindar* from his estate would not, beyond payment thereout of the *jama*, be further touched or taxed; that the imposition of a tax on the income of a *zamindar* derived from his *zamindari* would be a breach of those guarantees and assurances; that the Indian Income Tax Act, 1922, does not, according to its true construction, purport to impose a tax on the income of a *zamindar* derived from his *zamindari*; and that, if such a tax could be said to be imposed under or by virtue of the language used in the Act, nevertheless the language used was not so clear and explicit as to operate as a repeal of the legislative provisions of the Regulations.

Such in outline was the appellant's contention.

Incidentally to this argument the Board was invited to consider and indeed, pronounce upon the question, mainly historical, of the position of the governing authority immediately before the Permanent Settlement in regard to ownership of the land or of some proprietary interest therein. The attention of their Lordships was called to the various views expressed in such works and documents as Field's "Regulations of the Bengal Code," Phillips's "Land Tenures of Lower Bengal" and Shore's Minutes. Their Lordships were also referred to certain reported decisions of the Courts.

Their Lordships, however, are of opinion that there is here no occasion for any pronouncement by them upon the question of the exact nature of the rights and interests in relation to the land which existed in the governing authority before 1793, but that this appeal falls to be determined upon a consideration of the language of the Regulations and of the Indian Income Tax Act, 1922.

In view of the argument that the Act does not according to its terms purport to impose a tax on the income of a *zamindar* derived from his *zamindari*, their Lordships propose in the first instance to examine the language of the Act, and then, if the Act does according to its terms, actually impose such a tax, to consider if the imposition of the tax is to any, and what extent, inconsistent with the provisions of the Regulations.

The Act of 1922 is a consolidation and amendment Act. Section 1 refers to its title, sphere of operation and commencement. Section 2 is a definition section. The rest of the Act is divided into ten chapters, of which only Chapters I and III seem relevant to the present purpose.

Chapter I is entitled "Charge of Income Tax," and consists of Sections 3 and 4. Section 3 is so framed as to charge income tax at the rate which may from time to time be enacted. The income tax is stated to be "in respect of all income profits and gains of the previous year of every individual." Section 4 (1) provides that the Act is to apply to all income profits or gains as described or comprised in Section 6 from whatever source derived, accruing or arising or received in British India or deemed

under the provisions of the Act to accrue or arise or to be received in British India. Section 4 (2) affords an instance of profits and gains accruing or arising without British India being deemed to accrue or arise in British India. Section 4 (3) enumerates a list of classes of income to which the Act shall not apply. Income derived from a *zamindari* is not included in the list, but " agricultural income " is included.

It would appear that the purpose of Section 3 is to charge income tax at the current rate for the time being, and that the purpose of Section 4 is (by subsection 1) to confine the tax to income actually or artificially accruing or arising or received in British India, and (by subsection 3) to exempt specified classes of income from tax.

Although Chapter I is entitled " Charge of Income Tax," the real charging section would appear to be Section 6, which occurs in Chapter III.

Chapter III is entitled " Taxable Income," and is composed of Sections 6 to 17 inclusive. Section 6 provides that " save as otherwise provided by this Act, the following heads of income profits and gains shall be chargeable to income tax, in the manner hereinafter appearing, namely :—

(i) Salaries.
(ii) Interest on securities.
(iii) Property.
(iv) Business.
(v) Professional earnings.
(vi) Other sources."

Each of the next following six sections deals severally with each of the six heads of income profits and gains specified in Section 6, and states with greater particularity the items in respect of which the tax shall be payable by the assessee under the particular " head," and gives details of allowances and exemptions in regard to the different heads. Section 9 accordingly deals with the head " Property," and a perusal of it makes it clear that the " income profits and gains " charged under the head " Property," are confined to the annual value of " buildings or lands appurtenant thereto," in other words to the annual value of what may be conveniently called house property. The income of a *zamindar* derived from his *zamindari* would not be chargeable under that head. If chargeable in the result it would be under the head " other sources."

Section 12 deals with that head, and requires close attention. Section 12 (1) provides that the tax shall be payable by an assessee under that head—

> " 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)."

These words appear to their Lordships clear and emphatic, and expressly framed so as to make the sixth head mentioned

in Section 6 describe a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them, *i.e.*, provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India, as provided by Section 4 (1), and are not exempted by virtue of Section 4 (3).

It was contended on behalf of the appellant that the income derived from a *zamindari* was never brought into charge at all, because, in Section 6, the words " other sources " must mean sources other than those described above and therefore could not include any source which could properly be described as " property."

Incidentally it may be pointed out that this argument, if successful, could not be confined to the income derived from a *zamindari ;* it would free from liability to income tax all income derived from land which did not consist of buildings or lands appurtenant thereto, and it would seem to render unnecessary the specific exemption of agricultural income.

Their Lordships, however, feel unable to accede to the argument. In Section 6 the words " other sources " used in relation to the word " property " would naturally mean sources other than the source which the word " property " connotes in this Act. But if there were any doubt on this score, it would disappear in the light of Section 12, the meaning and effect of which have been indicated above.

Upon this part of the case therefore their Lordships are of opinion that the Indian Income Tax Act, 1922, by Sections 6 and 12, brings into charge for the purposes of income tax the income derived from a *zamindari*, and that a *zamindar* is assessable in respect of income, profits and gains derived from that source.

Before leaving this part of the case their Lordships deem it right, in view of discussions in the course of the arguments before the Board, to make a further statement as to the liability of the appellant to pay income tax upon the income derived from his *zamindari*.

The tax is upon " income, profits and gains." It is not a tax on gross receipts. With this fact in view, each section which deals with one of the first five " heads " specified in Section 6 contains, where proper, specific provisions for the necessary deductions and allowances to be made for the purpose of arriving at the taxable balance. Section 12, which deals with the general residuary group, is necessarily framed in general terms and authorises the allowance of any " expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains."

Their Lordships were unable to ascertain upon what footing the appellant had been assessed in respect of the income derived from his *zamindari*, *i.e.*, whether on the gross income or after some allowance had been made in respect of the *jama* assessed and paid upon the lands. Their Lordships are of opinion that,

in assessing the appellant to income tax in respect of the income derived from his *zamindari*, his income, profits and gains from that source should be computed after making proper allowance in respect of the *jama* assessed and paid.

Their Lordships now proceed to consider the question whether the imposition of income tax in respect of the income derived from the *zamindari* is to any and what extent inconsistent with the provisions of the Regulations.

In regard to this part of the case their Lordships desire to make this observation. The Bengal Regulations of 1793 are lengthy and numerous. In the course of the arguments before the Board attempts were made to support the respective arguments by a phrase picked from one Regulation or a passage chosen from another, even though the particular Regulation only purported to deal with some matter incidental to the Permanent Settlement. In the opinion of their Lordships this part of the case falls to be determined primarily upon a consideration of the language of Regulation 1 of 1793. While bearing in mind the passages in other Regulations to which their attention was drawn, their Lordships feel that the above-mentioned Regulation is the master Regulation for the immediate purpose before the Board, and that its provisions constitute the over-riding feature in the present case.

It bears date the 1st May, 1793, but is retrospective and operates as from the 22nd March, 1793. This last-mentioned date was the date of a Proclamation, to certain Articles of which the Regulation gave legislative effect.

In so far as it relates to the case of the appellant, the Regulation may be conveniently summarised.

Articles I and II of the Proclamation (paras. 2 and 3 of the Regulation) contain a notification by the Governor-General in Council to all *zamindars* in the province of Bengal that he has been empowered by the Court of Directors for the affairs of the East India Company to declare the *jama* which has been or may be assessed upon their lands under the Regulation for the decennial settlement of the public revenues of Bengal passed on the 18th September, 1789, fixed for ever.

Article III of the Proclamation (para. 4 of the Regulation), contains a declaration to the *zamindars* with whom a settlement had been concluded under the Regulation of the 18th September, 1789, that at the expiration of the term of the Settlement no alteration will be made in the assessment which they have engaged to pay, but that they and their heirs and successors will be allowed to hold their estates at such assessment for ever.

Article VI of the Proclamation (para.. 7 of the Regulation), is of great importance and appears to their Lordships to embody the legislative statements and provisions which are most favourable to the arguments advanced on behalf of the appellant. The first sentence recites as facts well-known in Bengal (1) that the public assessment upon the land has never been fixed;

(2) that the rulers have from time to time demanded an increase of assessment from the proprietors of land; (3) that for the purpose of obtaining this increase not only have frequent investigations been made to ascertain the actual produce of the estate, but it has been the practice to deprive the proprietors of the management of their lands. The second sentence of Article VI recites that the Court of Directors considers these usages and measures detrimental to the prosperity of the country, and states that the *zamindars* with whom a settlement has been or may be concluded, are to consider the orders fixing the amount of the assessment as irrevocable and not liable to alteration. The third sentence runs as follows :—

> " The Governor-General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment, in consequence of the improvement of their respective estates."

It is upon this third sentence of Article VI that the appellant mainly relies for his contention that the imposition of income tax in respect of the income derived by him from his *zamindari* would be a breach of and inconsistent with the provisions of the Regulations. He alleges that the *jama* was a tax and not a rent or rent-charge, and that by the Regulations a legislative assurance or guarantee was given that no tax beyond the amount of the fixed *jama* would be imposed upon the income of the permanently settled estate.

To this contention the respondent makes answer :—(1) that what the permanent settlement accomplished was to fix for ever the quantum of the Government's share of the produce of the land; and (2) that upon their true construction the Regulations do not purport to exempt the *zamindar* from taxation in respect of the income derived from his *zamindari*.

Their Lordships, after careful consideration of the Regulations, have arrived at the conclusion that the argument of the appellant cannot succeed.

They are unable to find in the Regulations any statement or assurance that a *zamindar* will never be liable to taxation in respect of the income derived from his *zamindari*, or (to put the matter from another point of view) that a *zamindar* will, as to so much of his property as consists of income derived from his *zamindari*, be exempt from schemes of taxation applicable generally to the incomes of the inhabitants of British India.

The language used in Regulation 1, Article VI, does not, in their Lordships opinion, mean anything other than this :— " You have in the past been liable to have the amount of the *jama* increased according as the actual produce of the estate increased; to enable the Government to obtain this you have been subjected to frequent investigations to ascertain the actual

produce and you have even been deprived of the management of your estates. All this shall cease. You shall have fixity of payment and fixity of tenure. If you improve the revenue of your *zamindari* you shall enjoy the fruits of your improvements without fear of the Government claiming that because the revenue produced by the estate has increased the payment you make to Government as a condition of holding that estate shall be increased also."

Their Lordships have ventured to paraphrase Article VI, but they think that their paraphrase expresses with sufficient accuracy the true intent and meaning of the Article. In their Lordships' opinion, while the Regulations contain assurances against any claim to an increase of the *jama*, based on an increase of the *zamindari* income, they contain no promise that a *zamindar* shall in respect of the income which he derives from his *zamindari* be exempt from liability to any future general scheme of property taxation, or that the income of a *zamindari* shall not be subjected with other incomes to any future general taxation of incomes.

Their Lordships agree with the views expressed by Ghose J. in the following passage from his judgment :—

> " There was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a general tax upon incomes of all persons irrespective of the fact whether they are Zamindars with whom the Permanent Settlement was concluded or not."

It follows that in their Lordships' opinion Question II and Question III should both be answered in the affirmative.

Question I was but faintly argued before the Board. As to it their Lordships need only say that they have not been furnished either with materials or reasons which would justify them in suggesting that any of the 10 specified items could properly be described as agricultural income within the definition of agricultural income contained in Section 2 (1) of the Indian Income Tax Act, 1922. Their Lordships accordingly agree with the negative answer which has been given to Question I.

For the reasons given their Lordships are of opinion that this appeal fails and should be dismissed, and they will humbly advise His Majesty accordingly. There will be no order as to the costs of this appeal.

In the Privy Council.

RAJA PROBHAT CHANDRA BARUA

v.

THE KING-EMPEROR

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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