

The Honourable Nawab Habibulla - - - - *Appellant*

v.

The Commissioner of Income-tax, Bengal - - - *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 14TH DECEMBER, 1942

Present at the Hearing:

LORD THANKERTON
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by LORD THANKERTON*]

The appellant is the hereditary Mutawalli of a wakf estate, and as such he draws remuneration, and the question in the appeal arises on a claim by him that the income thus received by him is exempt from taxation, which came before the High Court of Judicature at Fort William in Bengal on a reference by the respondent, at the appellant's request, under section 66 (2) of the Indian Income-tax Act, 1922, with a statement of the case and the opinion of the respondent rejecting the appellant's claim to exemption. The question of law referred to the Court was,

" Whether in the facts and circumstances of the case the sum of Rs.49,500 received by the assessee as his remuneration as Mutawalli was ' agricultural income ' within the meaning of section 2 (1) of the Income-tax Act? "

For the assessment year 1938-1939 the appellant was assessed for income-tax purposes on an amount which included the sum of Rs.49,500 under the head of salaries, which was the appellant's remuneration as Mutawalli for the year of account and included both current salary and arrears. It is admitted that the income of the wakf estate from which the appellant's said remuneration was drawn, was " agricultural income."

The wakf was created by an ancestor of the appellant by a wakfnamah dated the 1st June, 1854. The post of Mutawalli was made hereditary, the wakif's son being first appointed. No benefit was reserved in any way either to the wakif himself or to his descendants and no remuneration was provided for by the wakfnamah for the post of the Mutawalli. In 1925, a suit in the Court of the District Judge, Dacca, in which the removal of the appellant was sought, was compromised on the basis of a Scheme of Administration which had been filed before the High Court and agreed to by all parties, and a decree in terms thereof was made by the District Judge of Dacca on the 24th May, 1928. Under the scheme the appellant's remuneration was provided for as follows:—

" 15. The remuneration of the Mutawalli payable from the wakt shall be rupees two thousand five hundred monthly together with a fixed allowance of rupees five hundred monthly for his conveyance the lighting of his apartments medical attendance and other personal charges incidental to his position. . . ."

It is enough to say that it is clear that under the scheme the appellant has only powers of management of the wakf estate and that those powers are limited in certain respects by the control of a committee of management.

The appellant maintains that the Rs.49,500 received by him as his remuneration in terms of the Scheme is "agricultural income" as defined in section 2 (1) of the Act of 1922, and that it is therefore rendered exempt from taxation by section 4 (3) (viii) of the Act. The relevant part of section 2 (1) is as follows,

"2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Agricultural income" means—

(a) 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."

The High Court rejected the appellant's contention, and their Lordships agree with their conclusion.

The appellant's counsel referred to the recent decision of this Board in *Income-tax Commissioner, Bihar and Orissa v. Maharajadhiraj of Dharbhanga* (1935), 62 Ind. App. 215, the judgment being delivered by Lord Macmillan. In that case a moneylender had lent money on a zarpeshgi lease and usufructuary mortgage of agricultural lands under which he was in possession with all the powers of an owner, and upon the terms that, after deducting from a gross estimated rental the estimated costs of management and a sum (*thika* rent) which was to be credited, he was to take the balance (*thika* profits). There was no dispute that the rents so drawn by him were agricultural income within the meaning of section 2 (1) (a) of the Act, and it was conceded that if the assessee had not been a moneylender and the transaction in course of his moneylending business, the statutory exemption would have applied, but it was maintained that the income was income, profits and gains of the business, and that it thereby lost the benefit of the exemption. The Board held that the result of the exemption is to exclude "agricultural income" altogether from the scope of the Act, howsoever or by whomsoever received, and that the nature of the assessee's business cannot affect the exemption.

In the opinion of their Lordships, that case affords a useful contrast to the present case. The position of the assessee in that case had been described by the Chief Justice of Patna—and this Board adopted the description—as follows,

"The mortgagee-lessee was to be in possession of both properties, and, in his relation to the cultivators of the soil he stood in the position of landlord, dealing directly with them and collecting the rents. He had moreover to pay the Government revenue, cesses and taxes and his name was registered in the Land Registration Department. He alone was able to sue for rent whether current or arrears, to sue for enhancement or for ejection and was able to settle lands with raiyats and tenants in all the properties, in fact he was in a position to take all proceedings which the mortgagor would have been able to take in the ordinary course if the lands leased and mortgaged had remained in her khas possession."

Accordingly, the assessee collected the rents directly in his own right, and the amount of his income therefrom depended on his exercise of these rights. The position of the appellant is very different:—the recovery of the rents depends on the rights of the wakf estate, and on the appellant's performance of his duties of management as Mutawalli, and the amount of his remuneration does not depend either on the nature of the properties or assets which constitute the wakf estate, nor on the amount of the income derived therefrom by the wakf estate. If, as might possibly happen, the whole or a portion of the wakf property ceased to be represented by agricultural lands, it is clear that the remuneration fixed by article 15 of the scheme would not be affected.

Their Lordships agree with the High Court in holding that, albeit the income received by the wakf estate is within the definition of agricultural income in section 2 (1), the sums drawn therefrom as remuneration by