

The Premier Construction Co. Limited - - - *Appellant*

v.

The Commissioner of Income Tax, Bombay City - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JUNE, 1948

Present at the Hearing :

LORD SIMONDS

LORD OAKSEY

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment of the High Court of Judicature at Bombay dated the 27th March, 1945, given upon the reference of a question of law made to the court under section 66 (1) of the Indian Income Tax Act by the Appellate Tribunal.

The question referred to the High Court was in the following terms :

“ Whether, in the circumstances of this case, that portion of the income received by the assessee from the principal company of Marsland Price and Company Limited which is proportionate to the ‘ agricultural income ’ earned by the principal company, is ‘ agricultural income ’ within the meaning of section 2 (1) of the Indian Income Tax Act, 1922, and exempt from assessment under the provisions of section 4 (3) (viii) of the Act.”

The High Court answered this question in the negative, taking the same view of the law as had been taken by the Income Tax Officer, the Appellate Assistant Commissioner of Income Tax, Bombay, and the Income Tax Appellate Tribunal. Their Lordships have no doubt that the view unanimously held by the Tribunals in India is correct.

The assessee, at all material times, was the Managing Agent of Marsland Price and Company Limited (hereinafter called “ the principal company ”), under an agreement dated the 1st February, 1926, and made between the principal company of the one part and the assessee (by its then name of the Tata Construction Company Limited) of the other part. The remuneration of the assessee was regulated by clause 2 of the agreement and under sub-clause (b) the assessee was entitled to :

“ A commission at the rate of ten per cent. per annum on the annual nett profits of the principal company after making all proper allowances and deductions from revenue for working expenses chargeable against profits but without making any deduction for depreciation or in respect of any amount carried to reserve or sinking fund or any payment on account of super tax or any deduction for expenditure on capital account provided that such commission shall not in any year amount to a less sum than rupees ten thousand.”

The year of assessment was the year 1942/1943. In that year the assessee received as remuneration under the Managing Agency Agreement a commission at the rate of ten per cent. of the nett profits of the principal company, that sum being in excess of the minimum salary secured by the agreement. The whole of this remuneration, less certain deductions which are not in question, was assessed to income tax by the Income Tax Officer.

One of the sources of income of the principal company is the manufacture of sugar from cane grown on its own farms and from other cane bought from outside, and it is not disputed that in so far as its income is derived from sugar manufactured from its own cane such income is agricultural income and as such is exempt from income tax. The assessee claimed that as its remuneration was calculated with reference to the income of the principal company, part of which was agricultural income, such part of the remuneration as was proportionate to the agricultural income of the principal company, was itself agricultural income and as such exempt from income tax. As already indicated, this claim was rejected by the Income Tax Officer, and in appeal by the Assistant Commissioner of Income Tax and the Appellate Tribunal. At the request of the assessee the Appellate Tribunal referred to the High Court the question already mentioned.

“ Agricultural income ” is rendered exempt from income tax by section 4 (3) (viii) of the Indian Income Tax Act. “ Agricultural income ” is defined by section 2 (1) of the Act, so far as relevant, as:

(a) Any rent or revenue derived from land which is used for agricultural purposes. . . .

(b) Any income derived from such land by:

(i) Agriculture, or

(ii) The performance of certain specified acts which may be paraphrased as acts necessary to render agricultural produce fit for market and sale.

Nothing turns on the exact words of this subsection.

In the opinion of their Lordships the effect of the Managing Agency Agreement is that the assessee is entitled, in consideration of services rendered, to a minimum annual salary of Rs.10,000 which is payable irrespective of whether or not the principal company has made any profit. If, in any year, ten per cent. of the profits made by the principal company exceeds Rs.10,000, then the agent gets remuneration calculated as a percentage upon the profits of the principal company, without regard to the sources from which those profits are derived.

In determining the question at issue some previous decisions of this Board must be noticed. In *Gopal Saran Narain Singh v. Commissioner of Income Tax, Bihar and Orissa* (62 I.A. p. 207) the assessee was entitled to an annuity under a contract, the annuity being made a charge upon agricultural land. The Board held that the annuity was not rent or revenue derived from land; it was money payable under a contract imposing personal liability on the covenantor, the discharge of which was secured by a charge on land. In *Commissioner of Income Tax, Bihar and Orissa v. Maharajahdiraj of Darbhanga* (ibi p. 215) the assessee carried on business as a money lender. As security for a debt due to him in respect of his business he was put into possession of agricultural land as a mortgagee. It was held that the rents received by the assessee from the agricultural land were agricultural income and exempt from income tax, and that the exemption was not affected by the circumstance that the rents were received as part of the money lending business of the assessee, the exemption depending on the kind of income received and not on the character of the recipient. In *Nawab Habibulla v. Commissioner of Income Tax, Bengal* (1942) L.R. 70 I.A. p. 14, the assessee as the Mutawalli of a Wakf received as remuneration for his services a monthly salary. It was held

by the Board that the fact that the income of the Wakf was derived from agricultural land did not make the remuneration paid to the Mutawalli " agricultural income " since the remuneration did not depend either on the nature of the properties which constituted the Wakf Estate, or on the amount of income derived therefrom by the Estate. With this case may be compared *Muhammad Isa v. Commissioner of Income Tax, Central and United Provinces*, I.L.R. (1942) Allahabad 425, where the High Court of Allahabad held that the assessee as Mutawalli of a Wakf was entitled, by way of remuneration for his services, to retain as a beneficiary the agricultural income of the Wakf Estate and that such remuneration was therefore free from income tax.

In their Lordships' view the principle to be derived from a consideration of the terms of the Income Tax Act and the authorities referred to is that where an assessee receives income, not itself of a character to fall within the definition of agricultural income contained in the Act, such income does not assume the character of agricultural income by reason of the source from which it is derived, or the method by which it is calculated. But if the income received falls within the definition of agricultural income it earns exemption, in whatever character the assessee receives it. In the present case the assessee received no agricultural income as defined by the Act; it received remuneration under a contract for personal service calculated on the amount of profits earned by the employer, payable, not in specie out of any item of such profits, but out of any moneys of the employer available for the purpose. The remuneration therefore is not agricultural income and is not exempt from tax.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs.

In the Privy Council

THE PREMIER CONSTRUCTION
CO. LIMITED

vs.

THE COMMISSIONER OF INCOME TAX,
BOMBAY CITY

[DELIVERED BY SIR JOHN BEAUMONT]

Printed by His Majesty's STATIONERY OFFICE PRESS,
DRURY LANE, W.C. 2.

1948