Privy Council Appeal No. 70 *of* 1931.

Bengal Appeal No. 10 *of* 1930.

Raja Bejoy Singh Dudhuria - - - - - - *Appellant*

v.

The Commissioner of Income Tax, Calcutta - - - - *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 10TH MARCH, 1933.

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.

Delivered by LORD MACMILLAN.]

This appeal relates to the assessment of the taxable income of the appellant for the year 1924–25, under the Indian Income Tax Act, 1922.

On the death of his father in 1894 the appellant succeeded to the family ancestral estate. His stepmother, who had survived his father, subsequently brought a suit for maintenance against him in the High Court at Calcutta. The suit was compromised and a decree was by consent pronounced directing the appellant to make a monthly payment of Rs. 1100 to his stepmother, which he has since regularly done. It is unfortunate that the decree has not been made available to their Lordships. The Chief Justice (Rankin), however, in the judgment now under review states that "it was not disputed that the lady's maintenance was a legal liability of the Raja [the appellant] arising by reason of the fact that the Raja is in possession of his ancestral estate, that it is payable out of such estate and that this Court

had declared that the maintenance was a charge thereon in the hands of the Raja."

In computing the income of the appellant for the year 1923–24 in respect of which, under Section 3 of the Act, the appellant was chargeable with tax for the year 1924–25, the income tax officer allowed a deduction of Rs. 9900, being three-fourths of the total sum of Rs. 13,200 which the appellant had paid in the year in question to his stepmother under the decree of the High Court. The whole sum of Rs. 13,200 was not deducted inasmuch as approximately a quarter of the appellant's income was under Section 4 (3) (viii) exempt from tax as being derived from agriculture ; a quarter of the payment was accordingly attributed to this untaxed income.

The appellant's stepmother on the other hand was assessed in respect of the Rs. 13,200 received by her as being " salary " within the meaning of Section 7 (1), and this assessment was confirmed by the Assistant Commissioner. On her appealing to the respondent, the Commissioner of Income Tax, Bengal, he called up for review the assessment of the present appellant, under Section 33 of the Act, and intimated that he desired to hear him on the question whether the sum paid by him for the maintenance of his stepmother should be allowed as a charge on his estate for the purposes of income tax assessment.

Thereafter on the 24th March, 1926, the respondent cancelled the assessment on the appellant's stepmother on the ground that the payments to her were not of the nature of a salary within the meaning of the Act, but on the contrary were paid to her in virtue of her right of maintenance as a member with the appellant of a Hindu undivided family of which the appellant was manager. Incidentally their Lordships note that a Hindu undivided family is included under the definition of " person " in Section 2 (9) and is a unit of assessment under Section 3, while under Section 14 (1) no tax is payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

On the same date, viz., the 24th March, 1926, the respondent issued another order reviewing the appellant's assessment, striking out the deduction of Rs. 9900 which he had been allowed and directing an amended assessment to be made on the appellant. The ground of the order was that the payments to the stepmother were " the maintenance expenses of a member of the Hindu undivided family of which the Raja is the manager."

The income tax officer accordingly issued a revised assessment, omitting the former deduction of Rs. 9900, and this was confirmed by the assistant commissioner. The appellant thereupon, under Section 66 (2) of the Act, required the respondent to refer a series of questions of law to the High Court, including the question whether the appellant and his stepmother could be treated as members of a Hindu undivided family and the

question whether the appellant was entitled to the exemption claimed by him.

After sundry procedure, which it is unnecessary to detail, the question of the appellant's right to have the Rs. 9900 excluded from his assessment came before the High Court for determination. There the Advocate-General abandoned the contention that the appellant and his stepmother were members of an undivided Hindu family and accepted the position that the appellant was liable to be assessed as an individual and in no other manner.

The learned Chief Justice in his judgment, which was concurred in by his colleagues, Ghose and Buckland, JJ., deals with the case on the footing that, by the decree of the Court, the appellant's stepmother had a charge not only on his zemindary property from which his agricultural income was derived, but also on all his other sources of income included in the assessment. He rejects the suggestion that the appellant's liability to his stepmother was of the same kind as his liability to provide for his wives and daughter, and states that the position is the same as if the appellant " had received his various properties, securities and businesses under a bequest from his father upon the terms that these assets were charged with an annuity for the maintenance of the widow." The case was not one of " a charge created by the Raja for the payment of debts which he has voluntarily incurred." Their Lordships agree that this is the correct approach to the question.

The learned Chief Justice next examines the various exemptions and allowances conceded in Sections 7–12 of the Act in respect of the several heads of income, profits and gains chargeable to tax under Section 6 and reaches the conclusion that the appellant's liability to his stepmother does not fall within any of these exemptions or allowances. With this conclusion their Lordships are also in agreement.

But their Lordships do not agree with the learned Chief Justice in his rejection of the view that the sums paid by the appellant to his stepmother were not " income " of the appellant at all. This in their Lordships' opinion is the true view of the matter.

When the Act by Section 3 subjects to charge " all income " of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging the appellant's whole resources with a specific payment to his stepmother has to that extent diverted his income from him and has directed it to his stepmother; to that extent what he receives for her is not his income. It is not a case of the application by the appellant of part of his income in a particular way; it is rather the allocation of a sum out of his revenue before it becomes income in his hands.

The learned Chief Justice refers to the case of the *London County Council* v. *Attorney-General* [1901], A.C. 26 and quotes

the following passage from the speech of Lord Davey at p. 42, dealing with the Imperial Income Tax Act of 1842 :—

> "It is not open to doubt, and was not disputed that ss. 60 and 102 alike mean that the person paying the yearly interest may deduct and retain the amount of the tax for his own benefit, and the scheme of the Act is so far clear and is in favour of the taxpayer. It was, no doubt, considered that the real income of an owner of incumbered property, or of property charged, say, with an annuity under a will, is the annual income of the property less the interest on the incumbrance or the annuity ; and the mortgagee or annuitant and the owner of the property are in a sense, entitled between them to the income."

Their Lordships agree with the learned Chief Justice that this passage, which he finds inapplicable, must be read in relation to the subject matter with which Lord Davey is dealing and they would further add, as they have had occasion to do more than once of late, that the invocation of the Imperial income tax code and of decisions pronounced upon it is apt to be very misleading in the interpretation of Indian income tax legislation which is framed on other and fortunately much simpler lines. But as the case of the *London County Council* v. *Attorney-General* has been mentioned, it may be permissible to point out that as appears from Lord Macnaghten's historical account of the development of the Imperial system of income tax legislation, the taxpayer was originally permitted in arriving at his chargeable income to make a great many deductions in respect of "annual interest for debts," "annuities" and so forth. Such a payment as the appellant is liable to make to his stepmother would certainly have been deductible. It was not until the principle of deduction of tax at the source was introduced that the deductions formerly authorized were prohibited and "the taxpayer liable to an annual payment, whether payable out of any subject of charge or not, was authorized to deduct and retain the tax upon the payment which he was bound to make." The correlative of the obligation to return as income sums which are really charges upon the taxpayer's income is the right to reimbursement of the tax on such charges. The Indian Income Tax Act makes no similar provision for the deduction of tax at the source and the consequent reimbursement of the taxpayer in the case of such a charge as that to which the revenues of the appellant are subject. While their Lordships are disinclined to entertain any argument from the one system to the other, they would infer, if any inference were permissible, that the omission from the Indian Act of any such provision points rather to an intention to tax, in Lord Davey's phrase, only "the real income" of the taxpayer, than to an intention to impose, without right of reimbursement, a tax on what is a charge upon his income.

As to whether the appellant's stepmother is liable under the Act to assessment in respect of the payments received by her their Lordships, like the Judges in the Court below, deem it inadvisable to say anything.

Being of opinion that the Rs. 9900 in question were not income of the appellant within the statutory meaning their Lordships will humbly advise His Majesty that the appeal be allowed, that the judgment of the High Court of the 12th August, 1929, be reversed except in so far as it finds the appellant entitled to the costs of the case stated to the High Court and that the case be remitted to the High Court with a direction that the assessment of the appellant to income tax for the year 1924–25 be amended by the deduction therefrom of the sum of Rs. 9900.

The appellant will have his costs of the appeal.

In the Privy Council.

RAJA BEJOY SINGH DUDHURIA

v.

THE COMMISSIONER OF INCOME TAX, CALCUTTA.

DELIVERED BY LORD MACMILLAN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.