Privy Council Appeal No. 68 *of* 1932.
Allahabad Appeal No. 38 *of* 1931.

The Commissioner of Income Tax, United Provinces of Agra and Oudh - - - - - - - - *Appellant*

v.

Messrs. Basant Rai Takhat Singh - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH APRIL, 1933.

Present at the Hearing:

LORD TOMLIN.
LORD RUSSELL OF KILLOWEN.
SIR GEORGE LOWNDES.

[*Delivered by* LORD TOMLIN.]

This is an appeal by the Commissioner of Income Tax of the United Provinces of Agra and Oudh from a judgment of the High Court of Judicature at Allahabad, dated the 10th July, 1931, upon a reference of questions made to the High Court by the Commissioner of Income Tax under section 66 of the Indian Income Tax Act, 1922.

The question arises in this way: The assessee is a Hindu undivided family. The assessment in question was an assessment made for the year 1929–30. The assessee was assessed on an income of Rs. 57,979. Of this Rs. 14,425 were derived from property owned by the assessee and were assessed under section 9 of the Income Tax Act. The remainder, Rs. 43,554, were assessed under section 12 and were derived from the rents of buildings erected by the assessee upon land leased from the Agra Cantonment authority.

The assessee appealed and his appeal was rejected by the Assistant Commissioner. He then applied under section 66 that

certain questions of law alleged to arise should be referred to the High Court.

The material facts are these : The assessee took a lease for twenty-five years from the Agra Cantonment authority. It does not appear when that lease commenced. Under the terms of the lease he had to erect certain permanent buildings which would become the property of the lessors on the determination of the lease. He erected those buildings. As from the 1st April, 1928, he had a fresh lease of the same property for thirty years. It does not appear whether the second lease was taken at or before the expiration of the first lease. The second lease also contained covenants as to building similar to those in the first lease, but in fact, of course, the buildings had already been erected. Under the second lease the buildings would become the property of the lessors at the determination of the lease. The second lease also contained provisions under which the lessee had the right of renewal for two consecutive periods of thirty years. In the case of each renewal, it was open to the lessors to increase the rent by an amount not exceeding 50 per cent. of the rent for the preceding period.

In those circumstances the Commissioner referred to the High Court three questions. The first was :—

> " Where the assessee has taken land on a long lease under which the land together with the buildings thereon will revert to the possession of the lessor on the expiry of the lease, has erected thereon masonry buildings and has received rents from lessees of the buildings, is the tax payable by the assessee in respect of the rents to be determined in accordance with section 9, or with section 10, or with section 12 ? "

The second question was :—

> " In the circumstances stated in question (i) is the assessee entitled, in accordance with section 12, to allowance for the expenditure incurred in the erection of the buildings ? "

The third question was :—

> " Is the allowance receivable in the form of an annual deduction equal to the amount of the expenditure divided by the years of the term for which the assessee holds the land on lease ? "

The first of those questions was answered by the Court holding that the assessment should be made under section 12, which was in fact the section under which the Commissioner had proceeded.

In regard to the second and third questions, the Court held that the assessee was entitled to a deduction from the rents in order to ascertain the taxable amount and that the deduction for the year of assessment should be one-thirtieth of the amount expended in erecting the buildings.

The assessee has not appealed from the decision of the Court that the assessment was properly made under section 12, but the Commissioner has appealed against the answers to the second and third questions by virtue of which a deduction is to be allowed

to the assessee. The assessee has not appeared before their Lordships' Board.

Now the relevant sections of the Act are sections 3, 4, 6, 9, 10 and 12.

Section 3, which creates the charge, says :—

> " Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals."

Section 4, sub-section (1), is as follows :—

> " Save as hereinafter provided, this Act shall 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 this Act to accure, or arise, or to be received in British India."

Then there are certain exceptions which need not be referred to, and section 6 provides : " 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 "—then there is a number of items of which the third is " Property " ; the fourth is " Business," and the sixth is "Other sources."

Section 9 deals with the head " Property," and states : " 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, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely "—then a number of allowances is set forth which may be made.

Section 10 deals with " Business," and provides : " The tax shall be payable by an assessee under the head ' Business ' in respect of the profits or gains of any business carried on by him." It also makes provision as to how those profits are to be calculated.

Section 12 deals with " Other sources " and provides : " The tax shall be payable by an assessee under the head ' Other sources ' 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)." It is to be noted that section 12 does not come into operation until the preceding heads are excluded. Then under sub-section (2) of section 12 it is provided : " Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee."

Now in the circumstances of this case and having regard to the course which the case has taken and the attitude of the respondents their Lordships feel themselves constrained to consider the matter upon the footing that section 12 is the proper section under which the assessment should be made, and accordingly they propose to deal with the matter upon that footing, but in so doing their Lordships must not be taken to be accepting the view that in fact section 12 is the proper section, or that section 9 is not applicable to this case.

The question therefore is whether the allowance which the High Court have considered a permissible allowance is in fact justified by the terms of section 12. In their Lordships' judgment it is not. Under section 12, sub-section (2), is specified what may be allowed as an "allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee." In their Lordships' view, on the true construction of that sub-section, the allowance for any expenditure incurred must be an allowance for expenditure incurred in the year in respect of which arise the income, profits and gains forming the basis of the assessment. Upon that footing, therefore, there can be no justification for deducting from the profits and gains something in respect of expenditure, whether it be regarded as capital expenditure or not, which occurred many years before.

In those circumstances their Lordships are of opinion that upon the footing already indicated the respondent was not entitled to the deduction, and that the answers given to the second and third questions, the subject of this appeal, are wrong and should be reversed and the appeal allowed accordingly. Their Lordships will humbly advise His Majesty to that effect. The respondents will pay the costs of the appeal.

In the Privy Council.

THE COMMISSIONER OF INCOME TAX, UNITED PROVINCES OF AGRA AND OUDH

v.

MESSRS. BASANT RAI TAKHAT SINGH.

DELIVERED BY LORD TOMLIN.

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