(1929) 12 AHC CK 0021

Allahabad High Court

Case No: None

In Re: Basant Rai
Takhat Singh of Agra

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 19, 1929

Acts Referred:

- Income Tax Act, 1961 - Section 10(2)(3)

Citation: AIR 1930 All 288

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Mukerji, J.
This is a reference by the Commissioner of Income Tax at the instance of Messrs. Basant Rai Takhat Singh of Agra.

2. It appears that the assessees are members of a Hindu joint family and are assessed as such. They carried on different kinds of business, but for the present, they have got some house property and they hold a lease from the Cantonment. The leased property consists mostly of vacant land let out to the assessees for one year. One of the conditions of the lease is that no permanent structure shall be erected on the land leased and the structure that is erected should be removable within 12 hours. What the assessees do is to let out the sites, with or without any shelter constructed by themselves over them, to different persons and realise ground rents from the sub-lessees. The Income Tax Officer of Agra assessed the income from the property of the assessees which consisted of various buildings in various parts of Agra and he also considered the income from the lease as income from property. The result was that, as it was discovered that what was received by the lessees from the land was less than the rent payable to the Cantonment

authorities, a deduction was made from the income of other house property of the deficit in the contract. The total income from house property came to Rs. 51,000 and odd (after the necessary deductions), and the difference between the rent payable to the Cantonment authorities and the rent realised, namely Rs. 9,000 and odd was deducted from the sum of Rs. 51,000 and odd. The assessees were assessed with a tax on the balance.

3. The assessees were not satisfied with this assessment and their grounds were these. They said that the contract obtained from the Cantonment authorities was a ''business'' and, further, as they had borrowed certain moneys in earlier years for other kinds of business, and, as they were paying interest on money so borrowed in previous years, they should be credited u/s 10(2)(3), Income Tax Act with the interest they had to pay. In other words, they wanted that the interest which they paid should be treated as an outgoing on the head of business and, therefore, the balance left after deducting the interest from the income, should be treated as their income from the business.

4. The assessees wanted that three matters should be referred to the High Court, but the learned Commissioner accepted their prayer as regards two points only. The questions which the Commissioner framed are as follows:

(a) Where, as in the present case, the assessee has taken land on lease and has erected on a part thereof houses and shops which are let out on rent and has let out the rest to squatters on rent, should the income derived from such rents be assessed under Sections 9 and 12 or u/s 10, Income Tax Act, 1922?

(b) Whether the interest on money borrowed for the purpose of a particular business in some particular year, and paid during the "previous year" when the business for which the money was actually borrowed did not exist, is an admissible deduction within the meaning of Section 10, Clause 2(3), Income Tax Act?

5. As regards question (a), on the facts stated by the learned Commissioner himself, the language does not appear to be very happy. We understand, and the learned Government Advocate accepts the facts, that the buildings that have been erected on the land leased to the assessees are entirely of a temporary nature. The buildings cannot be substantial under the terms of the lease itself and, therefore, the houses and shops that have been erected are mere stalls which are to give shelter to people coming to keep their goods or do other business at the place. The lessees have certain houses, in the proper sense of the word, and they have been taxed as property. The property in Anaj Mandi mentioned in the lease at p. 11 of the printed book, is not a part of the leased property, the list of which is given at p. 10. For the purposes of our answer, we have to take it, therefore, that several pieces of land belonging to the Cantonment authorities were taken on lease for one year only with the idea that parcels of it should be let out to sublessees for a period not more than one year, and rent should be received from these sub-lessees for the benefit of the

lessee. The question then is whether this contract which the lessees obtained from the Cantonment authorities is ''property'' or it is ''business.'' In our opinion it is neither ''property'' nor is it ''business.'' The income from this source must come under Clause (6), Section 6, Income Tax Act and it must be assessed as directed in Section 12, Income Tax Act.

6. We are of opinion that the income from the contract is to be assessed as income from "other sources."

7. That being our opinion on Q. (a), Q. (b) does not at all arise. That question was framed because the Commissioner did not know what the High Court was going to hold on the contention of the parties. As we have held that the income from the contract has to be treated as income from ''other sources,'' we do not think that we can be properly called upon to pronounce an opinion on a question which does not arise.

8. We direct that a copy of this judgment be sent to the Commissioner as our answer to the question put by him. The assessee must pay the costs of this reference. We direct that the learned Government Advocate''s fee be assessed at Rs. 150 provided he files his certificate of fee within the period allotted.