(1934) 04 PAT CK 0026

Patna High Court

Case No: None

Commissioner of Income Tax	APPELLANT
Vs	
Gopal Sharan Narain Singh	RESPONDENT

Date of Decision: April 17, 1934

Acts Referred:

- Income Tax Act, 1961 - Section 12, 4, 40, 6, 66

Hon'ble Judges: Courtney-Terrel, C.J; Varma, J; Mohammad Noor, J

Bench: Full Bench

Judgement

Courtney-Terrel, C.J.

The question in this case is whether a certain life annuity acquired by the assessee is or is not assessable to Income Tax. The assessee was the owner of a landed estate known as the ''9 annas Tikari Raj.'' He had contracted heavy debts. On 29th March, 1930, he executed a (deed by which he transferred his entire interest in that estate to the mother of the gentleman to whom his daughter had been married. The consideration for the transfer was the payment by the transferee of the transferor''s debts amounting to a considerable sum, the further payment by her of the expenses of the marriage of the daughter and a life annuity of Rs. 2,40,000. The assessee at the date of the transfer was aged 47 years (the estimate by the Commissioner appears to be an arithmetical error.)

2. It is contended by the assessee that the life annuity payments must be considered as payment by instalments of a capital purchase sum and it is immaterial that the total amount of such capital sum will depend upon the duration of his life. Secondly, it is contended that in any case the payment should be considered as derived from the estate and therefore exempt from taxation u/s 4(3)(viii) as agricultural income. As to the first of these points it has long been recognized that an owner of capital may exchange it for an income which is taxable, or for another form of capital which is not taxable and the question whether what was obtained in exchange should be considered as taxable depended upon the nature of the transaction in the particular

case. In the leading case Foley v. Fletcher the distinction was clearly indicated. There the owner of certain buildings, lands and mines assigned the same to purchasers, who covenanted to pay a specified sum in cash and a further specified sum by annual instalments. It was held that the annual instalments were not liable to income tax. Chief Baron POLLOCK said (p. 779):

These instalments are payments of money due as capital ; the Act has made no provision for such a case. It (the Act) professes to charge profits only.... If payments such as those in the present case are subject to income tax, whether any debt of any sort is to be repaid by annual payments, or be instalments at three or six months, it would by subject to income tax....

If the annual payment is the repayment of principal, the return of a debt, and is not profit, it is not at all within the purview of the Act, the very title and all the provisions of which announce that it is for imposing a tax on profits. If there is the purchase of an annuity, that annuity is made chargeable in express terms. But this is not a contract to pay an annuity, but to pay a principal sum of money and the Court can only carry into effect the language of the Act.

3. And WATSON B., said (p. 784):

An annuity means where an income is purchased with a sum of money, and the capital has gone and has ceased to exist, the principal having been converted into an annuity. Annuities are made chargeable by express words.

4. Now, it is argued on behalf of the assessee that this decision was based upon the English Statute enforced at that time in which annuities were expressly made assessable to income tax and it is pointed out that under the Indian Income Tax Act annuities are not expressly taxed save u/s 7, Sub-section (1) in the case of an annuity in lieu of or in addition to salary or wages). Section 6, however, after specifying certain classes of income as taxable has a concluding Clause '' (vi) Other sources.'' Furthermore, the section begins with the words:

Save as otherwise provided by the Act, the following heads of income, profits and gains, shall be chargeable to income tax in the manner hereinafter appearing.

5. It was urged that the words '' profits '' and '' gains '' are a limitation upon the word income and that no income is taxable unless it is by way of profits or gains, and the word '' profits '' used in Foley y. Fletcher is used to support this argument. But it is there used as synonymous with '' income and the argument is to my mind erroneous. There is no definition of income in the Act and the words '' profits and gains'' are an amplification and not a limitation upon the word '' income Moreover, the words '' other sources '' in the Indian Act indicate that anything which can properly be described as income is taxable unless expressly exempted. A long succession of cases has shown that the contrasted terms are, on the one hand, ''income'' and on the other hand, ''capital It is not the case of a contrast between ''

income '' and '' profits and gains'', but merely that ''profits and gains'' are varieties of income'' Under the Income Tax Act if an annuity is in fact an income it is chargeable to income tax unless specifically exempted. Indeed the contention for the assessee was pushed to the extent of a proposition that a life annuity purchased in the ordinary course of business from a life assurance company is not taxable, there being no express words (save u/s 7 relating to annuities. But the difficulty and extravagance of this proposition became manifest, and on behalf of the assessee it was then urged that in this particular case the assessee should not be deemed to have purchased an annuity.

6. It was suggested that he had merely sold a capital estate and the purchaser had covenanted to pay the ''price'' in the shape of annuity. Now, to my mind, the test of the matter does not depend upon whether there had been a ''sale'' or whether the assessee is to be considered as a ''vendor'' or as a purchaser''. It is also immaterial whether what is received by the assessee is called a ''price''. In one sense money received in exchange for something else is always the ''price''. These terms and their meaning have no bearing on the real question, which is whether the consideration to be paid by the other party to the contract is in the nature of ''capital'' or is income. In the latter case it is taxable.

7. The nature of the transaction by which the sum which it is proposed to assess was acquired by the assessee may be examined in each case as it arises for the purpose of ascertaining the legal rights of the assessee to the payment in question. It is hardly necessary to say that it is the substance of the transaction and not the form which is important. It would be quite possible for the assessee to be given as a matter of form a right of payment by instalments of a capital sum but which nevertheless would in substance. be a right to an income. For example a man may "sell" to another an estate worth a lac of rupees in consideration that the person to whom the estate was sold should pay him for a thousand years Rs. 100 annually. This disadvantageous bargain would in substance result in the vendor surrendering his position as a capitalist for that of a receiver of income.

8. On the other hand may be cited as an instance of the opposite condition the case of Minister of National Revenue v. Spooney where the respondent sold all her title and interest in land which she owned in freehold to a company in consideration of a sum in cash, shares in the company, and an agreement to deliver to her 10 per cent, (described as a royalty) of all oil produced from the land, and the company covenanted to carry out boring operations for oil. The company struck oil and paid to the respondent in 1927, 10 per cent, of the gross proceeds of the oil produced which she accepted in discharge of the royalty for that year. The Supreme Court of Canada held that the sum received was not income notwithstanding the use of the word " royalty," but the residue of a capital sum and accordingly that the respondent was not chargeable to tax in respect of it. Their Lordships of the Privy Council stated that they were not disposed to disagree with the view of the

Canadian Court of the transaction, and held that the contract may have taken the form which it did, because of the uncertainty whether oil would be found by the purchaser or not ; as the value of the land depended on this contingency and upon the quantity of oil, found, if any, the price, not unnaturally, was made to depend in part on the result. This case was relied upon by the assessee because of the resemblance between it and his own case in the matter of the uncertainty of the purchase price.

9. To my mind this resemblance is entirely immaterial. The point is that their Lordships held on the facts of that case that the price received by the vendor was in the nature of capital and not in the nature of income. The argument of the assessee is moreover fallacious for, whereas in the Canadian case the value of the land depended upon the contingency that oil might or might not be found and upon the quantity so found, it cannot be said in this case that the value of the estate transferred by the assessee depended in any manner on the uncertainty as to the number of years which he might live. In the case before us the assessee, before the transaction, enjoyed the benefits of a capitalist with the burden of control of the capital. He has discarded the capital with its pleasures, burden and risks and now enjoys an income only. It is no part of the business of " the Court to demarcate the boundary between two categories with mathematical certainty. The indication of the boundary need only be sufficiently distinct for the immediate problem in hand. A very ill-defined boundary line is adequate to solve the problem whether Patna is in Nepal or in India. Human ingenuity will always endeavour to defeat the law and may render it difficult to say in a given case on which side of the boundary line the transaction in question lies. In the present case there is to my mind no such difficulty. In the case of the Secretary of State v. Scoble the Secretary of State purchased from the assessee a railway, paying in full the amount of the value of all the shares or capital stock in the Railway Company. By a clause of the contract the purchaser had the right at his option excercisable at any time to pay what was called an " annuity " at a certain fixed rate during the residue of a certain fixed term. LORD HALSBURY said:

Was it the intention of the Income Tax Acts ever to tax capital as if it was income ? I think it cannot be doubted upon the language and the whole purport and meaning of the Income Tax Acts, that it never was intended to tax capital as income at all events. Under the circumstances I think I am at liberty so far to analyse the nature of the transaction as to see whether this annual sum, which is being paid, is partly capital or is to be treated simply as income ; and I cannot disagree with what all the three learned Judges of the Court of Appeal pointed out, that you start upon the enquiry into this matter with the fact of an antecedent debt which has got to be paid, and if those sums which it cannot be denied are partly in liquidation of that debt which is due, are to be taxed as if they were income in each year, the result is that you are taxing part of the capital. As I have said I do not think it was the intention of the legislature to tax capital, and therefore the claim as against part of

those sums fails....

The income tax is not and cannot be, I suppose, from the nature of things caste upon absolutely logical lines and to justify the exaction of the tax the things taxed must have been specifically made the subject of taxation, and looking at the circumstances here and the word '' annuity '' used in the Acts, I do not think that this case comes within the meaning which (using the Income Tax Acts themselves as the expositors to the meaning of the word) is intended by the word '' annuity.''

10. It will be noticed that their Lordships dealt with the substance and not the mere form of the contract and the rights of the assessee thereunder and moreover considered that the material question was whether, notwithstanding the use of the word "annuity "the annual sum was or was not to be considered as income. The decision in Foley v. Fletcher was moreover approved. In my opinion it is unnecessary to refer to the other numerous examples provided by authorities quoted in the course of the argument. I can see no conflict between them in matters of principle. Enough have been examined to provide a boundary line between "capital" and "income" for the purposes of this case. The first question submitted to us is, "whether in the eye of the law the sum in question is part of the price of the property and as such is capital and so not taxable."

11. I would answer this by saying that the sum in question is not capital but is income and is so taxable, and it is immaterial that it is the "price" of the property transferred. The assessee further contends that in any case the income represented by the life annuity is exempted from taxation as '"'agricultural income." He relies upon the passages in the statement of the case by the Commissioner of Income Tax to the effect that the transaction was by way of "family arrangement" and contends that the meaning of this finding is that the contract was that the income be paid to the assessee or be raised out of the profits of the estate and be paid to him. In my opinion, the findings both of the Commissioner and the Assistant Commissioner (and it is the finding of the latter with which we are concerned) have not the meaning attributed to them by the assessee. The officers merely expressed their opinion that the assessee and the lady struck a bargain which would not have been likely save between closely connected families. It is not contended by the assessee that there is a finding that the contract was riot intended to be given its full force and effect. It is just as binding as if it had been made between total strangers. The contract on the part of the lady is a personal contract to pay the specified annuity. It is true that there are terms to the effect that the assessee should have a further and collateral security in the shape of a charge upon the property transferred, but the contract for this collateral security does not affect the absolute right of the assessee to receive the annuity whether the land transferred does not produce the annual sum sufficiently to enable the lady to pay it. In these circumstances the annuity cannot be considered as '"'revenue derived from land which is used for agricultural purposes.

12. The second question submitted to us is as follows:

In the alternative is the transfer to be deemed as family arrangement and if so is the income in question agricultural?

13. I would answer this by saying that the question of whether the transfer is or is not a "family arrangement" is immaterial, and in any case the income in question is not agricultural. The assessee who has been unsuccessful throughout will pay Rs. 500 by way of costs in addition to the sum deposited by him.

Mohammad Noor, J.

14. The Commissioner of Income Tax has at the instance of the assessee submitted, for decision of the High Court, a statement of the case u/s 66(2), Income Tax Act. The assessee was the proprietor of the estate known as 9 ,annas Tikari Raj. Under a deed of sale dated 29th March, 1930, he transferred practically the estate, or at any rate a very large portion of it, to Rani Bhubaneshwar Kuer, who on her own right is the proprietress of the 7 annas Tikari Raj. The lady''s son was married to the daughter (the only child) of the assessee. The consideration for the transfer as mentioned in the deed of sale was the payment of the debt due from the assessee amounting to Rs. 10,26,937 a cash payment of Rs. 4,73,063 to-meet the expenses of the marriage of the daughter and other expenses, making a total of Rs. 15,00,000 and an annual payment of Rs. 2,40,000 during the life of the vendor. The question is whether this annual receipt of Rs. 2,40,000 by the assessee is assessable to income and super taxes. It was contended on behalf of the assessee that the payment being the consideration money of the estate sold was capital and not taxable and in the alternative it was urged that the transaction was a family arrangement and the annual payment was to be made from the income of the estate itself and was as such an agricultural income. The following questions were formulated by the Commissioner of Income Tax:
(1) Whether in the eye of law the sum in question is a part of the price of the property and as such is capital and so not taxable? (2) In the alternative is the transaction to be deemed to be family arrangement, and if so, is the income in question agricultural ?

15. I entirely agree with my Lord that the second question must be answered in the negative. The annual receipt of Rs. 2,40,000 can in no sense be treated as agricultural income. The sale deed does not state that the payment is to be made out of the income of the estate. It is to be made independent of any such income. No doubt, there is a provision that for this annual payment the estate sold was to remain under charge but that, as has been pointed out by my Lord, is by way of a collateral security. There is nothing in the deed, which is before us, to show that it was ever contemplated that the Rs. 2,40,000 is to come out from the estate itself. The only question, therefore, is whether this Rs. 2,40,000 per annum payable till the life of the assessee is a taxable income. If it is, it can only be if it comes under

heading (vi) " other sources" of income mentioned in Section 6, Income Tax Act, which has been specified in Section 12 of the Act. This last section enacts that:

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).

16. It has been contended on behalf of the Crown that his annual receipt of Rs. 2,40,000 is an annuity instead. Annuity as such has been mentioned only in Section 7 of the Act which deals with " salary or wages, any annuity, pension or gratuity and any fees'', commissions, perquisites or profits received by a man in lieu of, or in addition to, any salary or wages, etc."

17. There is no question that the receipt under consideration does not come under " annuity " as mentioned in Section 7 of the Act. Under the English Income Tax Act an annuity is taxable as such. The language of the statute there is:

All profits arising from interest, annuities, dividends and share of annuities payable out of any public revenue, etc. etc., and all interest of money, annuities and other annual profits and gains not charged by virtue of any other schedules contained in the Act : (Income Tax Act of 1853).

18. In the Indian Act, as I have said, annuities have not been expressly taxed except as salary and before an annuity can be taxed it must be shown to come within the purview of "income, profits or gains " as mentioned in Section 12, Income Tax Act. The learned advocate for the assessee placed his case rather too high when he contended that annuities were not assessable at all in India, as they are not specifically mentioned in the Indian Act. They were assessable in England by virtue of a specific provision of law. I am however unable to agree with this contention. The omission of "annuity" in the Indian statute does not, in my opinion, affect the question. The Indian law has used a very wide term "income" and annuities are assessable provided they are income, but not if they are capital.

19. The question which we are called upon to answer is whether this annual receipt of money by the assessee is income as contended for by the department, or capital as urged by the assessee. If the latter, there is no doubt that it cannot be assessed. I regret that I have respectfully to differ from my Lord. In my opinion, the annual receipt is the capital price of the property, sold, and not income. Though income is a very wide term signifying "what comes in," and includes any receipt, the scheme of the Indian Act, like that of the English Act, clearly excludes capital from the category of assessable income. In In re Jyoti Prasad Singh Deo SIR DAWSON MILLER, late Chief Justice of the Court, observed:

Without giving an exhaustive definition it (income) may be described as the annual or periodical yield in money or reducible to a money value arising from the use of real or personal property or from labour or services rendered, bearing in mind that

in some cases, e.g., income derived from house property the yeild must be taken as the bona fide annual value and not necessarily as the annual yield.

20. The question for consideration is--is this receipt by the assessee derived from the employment of the capital, or is it the return of the capital itself the payment of the price having been spread over the period of the vendor''s life. Whether a particular income is capital or not is always a question of fact. In Perrin v. Dickson, LORD HANWORTH, M.R., agreeing with ROWLATT, J., observed that there was no simple touchstone to be applied. Each transaction must-be examined on its own merits. In that case ROWLATT. J., had as LORD HANWORTH said, analysed and dissected the transaction.

21. In the case of British Dye Stuff Corporation v. Commissioners of Inland Revenue the corporation gave an American company the right to exploit its patents and secret processes in certain territories. In return the corporation received £25,000 a year for ten years. It was held that the annual payments were income, and not repayment in instalments of the purchase price of the capital asset. ROWLATT, J., observed : (see quotations in Sundaram on Indian Income Tax. The full report is not available here):

It is one of those cases that just depends really on how you look at it.... It is really using this property if you like and taking an annual return, for it roughly corresponds probably to its average life and not of sale once and for all of a capital asset.

22. In the Court of Appeal BANKES, L.J., says as follows:

I do not myself think that the method of payment adopted in carrying through a transaction is very much a guide to the true nature of the transaction. I read this agreement taking it as a whole as a trading convention.

23. I have referred to these cases in order to show that the decision does not depend at all upon the interpretation of the statute, but upon the interpretation of the transaction. A transaction may from one point of view be looked upon as an acquisition of income, and from another point of view it may be a transfer and realization of a capital value. Unfortunately in this case the department has not supplied us with sufficient materials to dissect the transaction. It would have been useful to know the value of the estate and the amount which would have secured a life annuity of Rs. 2,40,000 for the assessee who was aged 47 years on the date of the transaction. In Perrin v. Dickson already referred to, evidence was adduced before the Commissioners to show the real nature of the transaction. I see no reason why the Commissioner of Income Tax did not investigate the matter further in order to ascertain how this annual payment of Rs. 2,40,000 was arrived at.

24. The assessee in his application to the Commissioner of Income Tax stated that the property was worth two crores. This has not been challenged ; rather Mr.

Manohar Lal relied upon it for the purposes of his own argument. The value of Rs. 28,80,000 (twelve times of Rs. 2,40,000) is admittedly notional. It was stated for the purposes of paying stamp duty. If the value is really two crores, the net income of the estate could not have been less than ten lakhs of rupees per annum. In that case the debt to be paid was not at all heavy. Rupees fifteen lakhs was paid in cash and if the valuation is correct Rs. 1,85,00,000 of the value was not paid. If the assessee lives even for fifty years more he will only be realizing his capital ; rather he will not be able to realize even the capital value of the estate, not to speak of any interest on it. If a man buys an annuity he expects that if he lives long he will get back more than he is investing, otherwise there is no point in buying an annuity if in no case he can get more than his capital however long he may live and will get much less if he dies early. From the transaction it is difficult to infer that the assessee was out to secure an annuity and not to sell his property. As I have said, the debt was not very large, if the value of the property has been correctly given by him in his application, the income of the estate was sufficient enough to bring him this sum of Rs. 2,40,000. One can only speculate as to the motive which led to sale. It may be that the vendor and the vendee being the proprietors of two distinct parts, of the same estate embarked upon an ambitious scheme of joining the two estates which as their names suggest were at one time parts of the same estate, namely, the Tikari Raj, and this was thought of in consequence of the marriage of the only child of the assessee with the son of the vendee, or it may be that a buyer to pay the full amount in cash was not available and the vendee was only willing to purchase on condition that the payment of the instalments would cease on the vendors death. Be that as it may, it is unnecessary to embark upon speculations as to the motive for the sale.

25. We are to consider whether the assessee was out to acquire an income for himself by divesting himself of his estate, or whether he wanted to sell the estate to the vendee and make arrangement for the realisation of the price on such easy terms which may be convenient to the vendee. Taking the transaction as a whole I am forced to adopt the latter view. No doubt, at one place in the deed it is mentioned that the assessee wanted to secure an income, but in the other place he calls the charge upon the estate "rent charge". These words are of great importance. To my mind the real nature of the transaction is that it is a sale of the estate out and out and the realisation of the price is spread over a number of years to end on the death of the assessee. The cessation of the payment of the instalment after the death of the assessee may be due to the fact that thereafter the instalment would have been payable to the daughter of the assessee who had already been provided for by her marriage with the son of the vendee and there was no point in her getting the instalment from her mother-in-law.

26. Though the Privy Council has pointed out in Commissioner of Income Tax v. Shaw Wallace & Co., that it is not always right to refer to English decision on income tax in dealing with Indian cases, I wish to examine some English cases which have been referred to by my Lord. My object is to show that even in England where

annuity is specifically taxable the decision of the question whether a particular receipt was or was not income has not been free from difficulty and ultimately it rested upon the decision of fact as to the nature of the transaction concerned. The first case is Foley v. Fletcher. Here Fletcher sold her half share in certain mines for £ 45,000, out of which £ 3,385 was payable in cash and the balance '' by half-yearly instalments of £ 768 and odd during the period of thirty years. It was held that the annual payment was not assessable to income tax. POLLOCK, C.B., observed as follows:

If the annual payment is the repayment of principal, the return of a debt, and is not profit, it is not at all within the purview of the Act, the very title of the provisions of which announce that it is for imposing a tax on profits. If there is the purchase of an annuity, that annuity is made chargeable in express terms.

27. There is no question that had the vendor realised the money from the vendee and then purchased an annuity in the market the annuity would have been liable to income tax. In practice the effect of purchasing an annuity in the market and getting the money in the shape of an annuity from the purchaser of the property is exactly the same. But while the one is chargeable to tax the other has been held not to be so, clearly indicating that it is the form of the transaction which is to be considered, and not its ultimate effect. It is conceded that in the present case if the amount of purchase money had been fixed spread over a fixed number of years, the receipts of the annual payments would not have been assessable to tax. Another case pressly stated to be so. Mr. Manohar Lal tried to distinguish these receded is the price of the property, and not an investment the capital I am unable to distinguish the present case from the one which has been referred to by my Lord namely, the case of Minister of National Revenue v. Spooner. There a portion of the consideration money was a certain percentage of the oil produced from the land Neither the amount was fixed nor the period But their Lordship, of the Judicial Committee agreeing with the Supreme Court of Canada held it to be capital, and not income As I have said, I see no difference between that case and the pre-sent one except that there both the amount and the period were uncertain here at any rate the amount is certain, though no not the period. Income is something derived from capital , and not capital itself.

28. I am of opinion that assessment in this particular case will really be taxing capital. I am not unmindful of the fact that efforts may be made to defeat the Income Tax Act. As my Lord has pointed out, this will always be the case howsoever carefully a statute may be drafted. It is a well recognised principle that a subject is entitled so to arrange not to attract taxes imposed by the Crown if he do so within the law. A subject may legimately claim the advance-taxing provisions are being defeated on account in the statute they can always legislate. Our duty is to apply the law strictly. If a subject comes within the terms of the statute he must be taxed irrespective of the consequences. If he does not come, then he must be released. In

this case the department has not shown that any portion of this Rs. 2,40,000 is income within the meaning of the Act. I would therefore on the materials before me answer the first question in the affirmative and hold that the annual receipt of Rs. 2,40,000 is not income within the meaning of the Act but is the price of the estate sold of which the full value was not taken cash down.

Varma, J.

29. I have had the advantage of'' reading the judgment of my Lord the Chief Justice and that of my brother Khaja Mohammad Noor, J. The question which we have to decide is not free from difficulties. The facts of the case are that the assessee transferred the whole of his interest in the estate which is known as the 9 annas Tikari Raj by a document dated 29th March, 1930, to the wife of Raja Bahadur Harihar Prasad Narain Singh of Amawan. The consideration for the transfer was, according to the deed, the payment of the debts due from the assessee amounting to over Rs. 10,00,000 and a cash payment of Rs. 4,00,000 and odd, and an annual payment of Rs. 2,40,000 for life to the transferor. The question is whether the annual payment to the assessee is assessable to income and super taxes. The contention on behalf of the assessee is that the annual payment is payment of capital and therefore not subject to taxation, whereas the Department contends that it is income which is subject to taxation. The Commissioner of Income Tax formulated the following questions and referred the matter to this Court for decision.

(1) Whether in the eye of law the sum is question is part of the price of the property and as such is capital and so not taxable?" and in the alternative

(2) Is the transaction to be deemed to be a family arrangement, and if so, is the income in question agricultural ?

30. I may dispose of the second question in a few words by saying that I entirely agree with the decision of my Lord the Chief Justice and my brother Khaja Mohammad Noor, J. In short, it is clear that this payment was not dependent on any income from the estate, and therefore it could not be said to be agricultural income. The first question is one of importance and is very difficult to answer. Is the sum of Rs. 2,40,000 to be considered as income, or is it to be considered as part of capital which was being paid back by instalments ? A large number of cases have been cited but before considering those cases, it is necessary to know what is meant by "income" as used in the Income Tax Act and for the purposes of this case, I cannot do better than to refer to the decision of the Privy Council in Commissioner of Income Tax, Bengal v. Shaw Wallace & Co., where their Lordships of the Judicial Committee laid as follows:

The object of the Indian Act is to tax ''income'' a term which it does not define. It is expanded, no doubt, into ''income, profits and gains but the expansion is more a matter of words than of substance. Income, their Lordships think, in this Act

connotes a periodical monetary return ''coming in'' with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. This income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as ''capital/ But capital, though possibly the source in the case of income from securities, is in most, cases hardly more than an element in the process of production.

31. Now, bearing these observations in mind, I proceed to consider the cases which have been cited on behalf of the assessee. In Minister of National Revenue v. Catherine Spooner, 20 acres of land were transferred to a company whose object was "drilling for and procuring the production and finding of oil." The transferor was to receive some cash, sortie shares and 10 per cent, of the petroleum, natural gas and oil recovered from the said lands free of cost. The question before their Lordships of the Privy Council was whether the value of the 10 per cent, of the petroleum, gas and oil produced in 1927 Was taxable as income or not. The Supreme Court of Canada had found that it was a part of the capital and therefore not taxable and their Lordships of the Privy Council in dealing with the appeal by the Minister of National Revenue held that it was for the Minister to displace the view of the Supreme Court as being manifestly wrong and the Minister not having succeeded in doing so, the appeal was dismissed. In settling the price of the 20 acres of land the parties had to consider not only the value of the land but also the amount of oil that could be taken out. The quantity of petroleum was not ascertainable and therefore, it was arranged that a fixed portion of the produce would be paid to transferor. The transaction was held to be a sale and purchase. The form which it took was due to the uncertainty whether oil would be found by the purchaser or not ; and as the value of the land depended on this contingency, the price was made to depend on that event. In the present case it cannot be said that the value of the property transferred could not be ascertained. In the case of Foley v. Fletcher towards the end of his judgment, POLLOCK, C.B., observed that:
If the plaintiff had sold her estate for an annuity, so calling it, the annuity would have been liable to Income Tax. But She has sold it for a sum which is payable by instalments, which is therefore not chargeable.

The case of Foley v. Fletcher mentioned above, was referred to in the case of Secretary of State v. Scoble which is also relied upon in this case on behalf of the assessee. In that case the Secretary of State for India had power by contract to purchase a railway, paying for the purchase, the full value of all the shares or capital stock of the railway company, with the option of paying instead of a gross sum "an annuity" for a term of years, the rate of interest to be used in calculating the annuity being determined in a specified way. The Secretary of State purchased the railway and exercised the option to pay an annuity instead of a gross sum. The annuity was

paid half-yearly, each payment representing; as to part, an instalment of the purchase money, and as to the rest, interest on the amount of the purchase money unpaid. In those circumstances it was held that the Income Tax Acts do not tax capital as income, and that the Income Tax was not payable upon that part of the annuity which represented capital. From the facts of this case referred to in the judgment of the Hon''ble the Chief Justice and my brother NOOR, J., it is clear that the period of time and the amount of money were fixed, and therefore, there was no difficulty in coming to the conclusion that the half-yearly payments were a part of the capital and not taxable income. It will be noticed in all these cases that the vendee''s or transferee''s liability does not cease with the life of the transferor, neither does it depend upon the life of the transferor. In the case of Chadwick v. Pearl Life Insurance Co., WALTON, J., while discussing the law on the subject said as follows:

In considering this question (whether the annual payment was an annuity or an annual payment) the general scheme of the legislation as to annuities in the Income Tax Acts must be kept in mind. It is admitted that there may be, in the words of the Act, an annual payment payable as a personal debt by virtue of a contract which is not an ''annuity or annual payment'' within the meaning of Section 40. If there is a sum of money owing by a debtor to his creditor, and it is agreed between them that the debt shall be paid by annual instalments, it is admitted that the annual instalments are not annual payments within the meaning of the section ; further than this, it appears from Foley v. Fletcher and Secretary of State v. Scoble that where the debt and the obligation to pay the instalments are created by the same instrument the same rule applies, and the instalments are not annual payments within Section 40. It is obvious that there will be cases in which it will be very difficult to distinguish between an agreement to pay a debt by instalments, and an agreement for good consideration to make certain annual payments for a fixed number of years. In the one case there is an agreement for good consideration to pay a fixed gross amount and to pay it by instalments; in the other, there is an agreement for good consideration not to pay any fixed gross amount, but to make a certain, or it may be an uncertain, number of annual payments. The distinction is a fine one and seems to depend on whether the agreement between the parties involves an obligation to pay a fixed gross sum.

32. His Lordship went on to observe further:

I asked the plaintiff''s counsel in the course of the argument what was the gross amount payable, but I received no satisfactory answer to the question. It is plain to me that no estimate of any gross amount was involved in the contract between the parties. What the vendors bargained for was that they should continue to receive until the end of the term the same amount of income which they were receiving from the property at the date of the assignment and that they should be paid in addition a lump sum of ₹1,000. In my judgment the annual payments of ₹ 1,625

were not paid as instalments of a debt, but were amounts payable and receivable as income, just in the same manner as an annuity which is payable for a certain number of years under a covenant or contract made in consideration of a sum of money paid by the annuitant as the price of the annuity. It seems to me to make no difference whether the contract to make the annual payments is entered into in consideration of money paid or in consideration of property assigned.

33. I rely upon the last portion of the observations quoted by me. Looking at the facts of this case it is clear that the object of the transfer was, as mentioned in the deed, to obtain for the assessee an adequate income apart from the burden of discharging his debts, just as one can arrange to purchase an annuity by paying a certain number of instalments in cash to an insurance company, which annuity is admittedly taxable. There is nothing to indicate that the annuity would cease to be taxable simply because instead of cash deposits an estate or a part of it was transferred. I am of opinion that the real object of the transfer was not to receive the capital price of the property but to secure an income for the assessee without the trouble and anxiety of managing the estate. For these reasons I would most respectfully differ from the view expressed by my learned brother NOOR, J., and I would answer the question in agreement with my Lord the Chief Justice that the sum in question is not capital but is a taxable income.