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Dr. Akshaibar Lal
v.
Vice-Chancellor, Banaras Hindu University

Hidayatullah J.

the impugned Resolutions were *ultra vires* and should be quashed.

In the result, the appeals are allowed. Resolutions Nos. 90, 94 to 96 and 99 to 102 dated May 15, 1960, of the Executive Council of the Banaras Hindu University are quashed, and an appropriate writ or writs shall issue to the respondents to that effect. The respondents shall pay the costs of these appeals, as also of the High Court. Only one set of hearing fee here and in the High Court shall be allowed.

Appeals allowed.

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January 11.

MAHANTH RAMSWAROOP DAS

v.

THE STATE OF BIHAR.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Agricultural Income-tax—Estate in management of Court Receiver—Owner if liable to be assessed to tax for such period—Bihar Agricultural Income-tax Act, XXXII of 1948, ss. 2, cl. (m), 3 and 13.

The appellant was the Mahant of the Asthal Estate in Bihar which was in the management of a Receiver appointed by the Civil Court in a suit relating to the estate. On appeal the question that arose for decision in this Court was whether the appellant-Mahant was liable to be assessed under the Bihar Agricultural Income-tax Act, 1948, to pay agricultural income-tax for the year in which the estate was in the management of the Court Receiver.

Held, that the income though collected by the Receiver was the income of the appellant. By virtue of the provisions of ss. 2, cl. (m) and 13 of the Bihar Agricultural Income-tax Act it was open to the taxing authorities to treat the Receiver as the assessee because he held the property from which income was derived, but on that account the income in the hand of the owner was not exempt from liability to assessment of tax. Section 3 of the Act provides for charging agricultural income of every "person" as defined in s. 2, cl. (m) which includes a receiver and s. 13 merely provides a machinery for recovery of tax from "persons" including receivers and is not by itself a charging section.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 449 of 1958.

Appeal by special leave from the judgment and decree dated August 7, 1956, of the Patna High Court in Misc. Judicial Case No. 604 of 1953.

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D. P. Singh, for the appellant.

S. P. Varma, for the respondent.

1961. January 11. The Judgment of the Court was delivered by

SHAH, J.—The High Court of Judicature at Patna answered in the affirmative the following question which was submitted by the Board of Agricultural Income-tax, Bihar, under s. 28(3) of the Bihar Agricultural Income-tax Act, XXXII of 1948—hereinafter referred to as the Act:

> "Whether, in the facts and circumstances of the case, the petitioner could be legally assessed for the income of the Estate in 1355 Fasli when the Estate was in the hand of the Receiver?"

With special leave under Art. 136 of the Constitution, this appeal is preferred against the order of the High Court. The appellant is the Mahant of the Asthal Estate, Salauna, in the District of Bhagalpur in Bihar. In a suit concerning that estate, a Court Receiver was appointed by the First Class Subordinate Judge, Monghyr, to manage the estate. The Receiver functioned till sometime in December, 1949, and under the order of the Subordinate Judge he handed over charge of the estate to the appellant on January 8, 1950. On January 15, 1950, the appellant submitted a return of income of the estate to the Agricultural Income-tax Officer, Monghyr, for the Fasli year 1355 corresponding to September 16, 1948, to September 15, 1949. The Agricultural Income-tax Officer assessed on August 7, 1950, the agricultural income of the estate at Rs. 90,507-2-6 and ordered the appellant to pay Rs. 20,290-13-0 as agricultural income-tax. Appeals against the order of assessment preferred to the Commissioner of Agricultural Income-tax and the Board of Agricultural Income-tax, Bihar, were unsuccessful. The Board however referred the question set out hereinbefore to the High Court under s. 28(3) of the Act as arising out of its order.

The only question which falls to be determined in this appeal is whether the appellant was liable to be assessed to pay agricultural income-tax for the year

in which the estate was in the management of the Court Receiver. Section 3 of the Act which is the charging section provides:

> "Agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person."

By s. 4, it is provided:

> "Save as hereinafter provided, this Act shall apply to all agricultural income derived from land situated in the State of Bihar."

The income of the estate of the appellant was not exempt from payment of tax and by virtue of s. 3, agricultural income-tax was charged upon the income for the assessment year in question, and the appellant was prima facie liable as owner of the estate to pay tax on that income. The appellant however relied upon s. 13 of the Act which provides:

> "Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force, or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him shall be assessed on such common manager, receiver, administrator or the like, and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same."

The appellant urged that if the land from which agricultural income is derived is held by a Receiver and the income is received by the Receiver, the Receiver alone can, by virtue of s. 13, be deemed to be the assessee and the Receiver alone is liable to pay the tax in respect of that income. In support of his contention, the appellant relies upon the definition of the word, "person" in s. 2, cl. (m) which states:

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"'Person' means any individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law, and includes an undivided Hindu family, firm or company."

In our view, there is no substance in the contention raised by the appellant. The liability to pay tax is charged on the agricultural income *of every person.* The income though collected by the Receiver was the income of the appellant. By s. 13, in addition to the owner, the Receiver is to be deemed to be an assessee. But the fact that the Receiver may, because he held the property from which income was derived in the year of account, be deemed to be an assessee and liable to pay tax, does not absolve the appellant on whose behalf the income was received from the obligation to pay agricultural income-tax. Section 13 merely provides a machinery for recovery of tax, and is not a charging section. When property is in the possession of the Receiver, common manager or administrator, the taxing authorities may, but are not bound to, treat such persons as assessees and recover tax. The taxing authorities may always proceed against the owner of the income and assess the tax against him. The definition in the connotation of "person" undoubtedly included a receiver, trustee, common manager, administrator or executor, and by such inclusion, it is open to the taxing authorities to assess tax against any such persons; but on that account, the income in the hand of the owner is not exempt from liability to assessment of tax.

Counsel for the appellant urged that the income received by the appellant from the Receiver did not retain its character of agricultural income and therefore also the appellant was not liable to pay agricultural income-tax. But this contention was never raised before the taxing authorities and no such question has been referred to this court. The character of the income was accepted to be agricultural

income in the hands of the appellant and the only question which was sought to be referred and raised before the Board of Agricultural Income-tax was one as to the liability of the appellant to be assessed to agricultural income-tax for the year in question.

In that view of the case, the appeal fails and is dismissed with costs.

Appeal dismissed.

M/S. BHOR INDUSTRIES LTD.

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY I.

(and connected appeals)

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Assessment of dividend income—Company incorporated in Indian State subsequently merged—Extension of Indian Income-tax Act to merged State—Taxation concessions to merged State—Scope—Assessment on shareholders of non-distributed profits—Exemption from taxation—Computation of dividends deemed to be distributed—Deduction of interest—Merged States (Taxation Concessions) Order, 1949, para. 12—Indian Income-tax Act, 1922 (11 of 1922), ss. 14(2)(c), 18A(8), 23A.

The appellant had been incorporated in 1944 as a private company limited by shares in the former State of Bhor with its registered office in Bhor. The shareholders of the company were at all material times resident in British India. By virtue of the States Merger (Governors' Provinces) Order, 1949, the State was merged with the Province of Bombay with effect from August 1, 1949. The provisions of the Indian Income-tax Act, 1922, were extended to the merged State with effect from April 1, 1949. Under the power given by s. 60A of the Act which enabled the Central Government to remove any difficulty in the application of the Act to merged States by making a general or special order granting exemption or other modification, the Central Government notified the Merged States (Taxation Concessions) Order, 1949. Paragraph 12 of that Order stated that "the provisions of s. 23A of the Indian Income-tax Act shall not be applied in respect of the profits and gains of any previous year ending before 1st day of August, 1949, unless the State law contains a provision corresponding thereto." The total world income of the company for 1946 and 1947 was Rs. 6,57,084 and 7,80,125 respectively and for those years the company declared dividends of Rs. 2,580 and Rs. 1,140. For the assessment years 1947-48 and