

Appeal from the High Court of Judicature at Bombay, in a reference under Section 66 of the Indian Income-tax Act, 1922.

K. M. Munshi (N. P. Nathvani, with him), for the appellant.

M. C. Setalvad, Attorney-General for India (H. J. Umrigar, with him), for the respondent.

May 26, 1950

The judgment of the Court was delivered by MEHR CHAND MAHAJAN, J.

This appeal arises from a judgment of the High Court of Judicature at Bombay in an income-tax matter.

It raises the question whether municipal property tax and urban immovable property tax, payable under the relevant Bombay Acts, are allowable deductions under Section 9(1)(iv) of the Indian Income-tax Act.

The assessee company is an investment company deriving income from properties in the city of Bombay.

For the assessment year 1940–41, the net income of the assessee under the head “Income from Property” was computed by the Income-tax Officer at Rs. 6,21,764, after deducting certain payments from the gross rents.

During the relevant year, the company paid Rs. 1,22,675 as municipal property tax and Rs. 32,760 as urban immovable property tax.

Deduction of both these sums was claimed under Section 9 of the Act.

Out of the first item, a deduction of Rs. 48,572 was allowed on the ground that this amount represented tenants’ burdens paid by the assessee. The remainder of the claim was disallowed.

Appeals to the Appellate Assistant Commissioner and to the Income-tax Appellate Tribunal were unsuccessful.

The Tribunal, however, referred the following two questions of law to the High Court:

1. Whether the municipal taxes paid by the applicant company are an allowable deduction under Section 9(1)(iv) of the Indian Income-tax Act.
2. Whether the urban immovable property taxes paid by the applicant company are an allowable deduction under Section 9(1)(iv) or under Section 9(1)(v) of the Indian Income-tax Act.

A supplementary reference covering a third question was also made, but that question is not before us and need not be considered.

The High Court answered all the questions in the negative. Hence, this appeal.

The question for determination is whether municipal property tax and urban immovable property tax can be deducted as allowances under clause (iv) of sub-section (1) of Section 9 of the Act.

The decision depends, first, on the construction of the language used in Section 9(1)(iv), and secondly, on the true nature and character of the liability imposed on the owner under the relevant Bombay Acts.

Section 9, so far as relevant, provides:

“(1) The tax shall be payable by an assessee under the head ‘Income from 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, subject to the following allowances, namely—

(iv) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.”

Clause (iv) thus contains four distinct sub-clauses corresponding to four different deductions.

Prior to the amending Act of 1939, clause (iv) contained only the first, third, and fourth sub-clauses.

Under the first sub-clause, interest is deductible irrespective of whether the borrowed capital was spent on the property or not. There is no requirement that the expenditure be capital or otherwise.

The expression “capital charge” cannot mean a charge on capital, that is, on the property itself. Such an interpretation would be redundant, as the opening words already indicate that the charge is on the property.

A capital charge must therefore mean a charge created to secure a liability of a capital nature.

In 1933, the Privy Council decided *Bijoy Singh Dudhuria v. Commissioner of Income-tax, Calcutta*. That case concerned an assessment on general income, not under Section 9. The

assessee was obliged by law to pay maintenance to his step-mother under a court decree charging all his assets.

The Privy Council held that the amount paid did not form part of the assessee's real income.

Although that decision proceeded on the basis that the outgoing was not income at all, the legislature, by the amending Act of 1939, appears to have extended the principle to income from property. Accordingly, the second sub-clause relating to an annual charge not being a capital charge was introduced.

It is this sub-clause which the appellant relies upon to claim deduction of municipal and urban property taxes.

The expression "capital charge" in the newly added sub-clause must carry the same meaning as in the earlier sub-clause, namely, a charge securing a capital liability. The second sub-clause thus allows deduction of annual sums charged on property, excluding repayment of capital in installments.

In *Commissioner of Income-tax, Bombay v. Mahomedbhoy Rowji*, the Bombay High Court construed the expression "annual charge" as a charge securing an annual liability. This interpretation was followed by the High Court in the present case.

The Allahabad High Court, in *Gappumal Kanhaiya Lal v. The Commissioner of Income-tax*, adopted the same construction.

There is, therefore, no conflict of judicial opinion. The phrase "annual charge" naturally means a charge securing a recurring annual liability.

As regards "capital charge", the correct interpretation is that it denotes a charge securing a liability of a capital nature, not merely a charge on capital.

The applicability of Section 9(1)(iv) depends on the statutory provisions governing the impugned taxes.

Under Section 143 of the City of Bombay Municipal Act, 1888, a general tax is levied on all buildings and lands. The primary liability to pay rests on the lessor. The tax is assessed annually on the rateable value, and an assessment book is maintained each year.

The tax liability is determined at the beginning of each official year and recurs annually. It is payable in advance in half-yearly installments. Section 212 creates a statutory first charge on the property for unpaid taxes.

Urban immovable property tax is levied under the Bombay Finance Act, 1932, on the annual letting value of property. The collection mechanism and statutory charge are similar.

Both taxes are therefore of the same character for purposes of Section 9.

The argument that liability arises only upon issuance of a demand notice is unsound. The liability is annual. The instalment system merely regulates payment.

The charge and liability co-exist. The expression “taxes due” means taxes for which liability exists under the Act, not merely taxes whose payment date has arrived.

Reference to Section 9(1)(v) or to Section 10 is misplaced. Land revenue stands on a different footing and is a paramount charge. Municipal taxes vary across provinces and are deductible only if they fall within clause (iv).

The reasoning of the Allahabad High Court is correct and is approved.

Result

The appeal is allowed.

The two questions referred to the High Court are answered in the affirmative.

The appellants are entitled to their costs.

Appeal allowed.