Supreme Court of India
Chhatrasinhji Kesarisinhji ... vs Commissioner Of Income-Tax, ... on 28 October, 1965
Equivalent citations: 1966 59 ITR 562 SC
JUDGMENT SHAH J. - On December 11, 1947, the appellant granted to the Shivrajpur Syndicate Ltd. rights for the mining manganese ore from lands in two villages, Shivrajpur and Bhat. The following are the materials terms of the indenture of lease :

"... In consideration of the rents and royalties, covenants and agreements by the and in these presents and in the Schedule here under written, reserved and contained and on the part of the lessee to be paid, observed and performed, the lessor hereby grants and demises unto the lessee all those the mines, beds, veins, and seams of manganese ore... situate, lying and being and under the land...

... To hold the premises ... granted and demised unto the lessee for the term of twelve years which shall be deemed to have commended from the first of December one thousand nine hundred and forty-five...

Yielding and paying therefore unto the lessor the several rents and royalties mentioned in part V of the Schedule at the respective times herein specified subject to the provisions contained in Part VI of the said Schedule."

In parts II, III, and IV of the Schedule liberties, powers, privileges, restriction and conditions enjoyed by the lessee were set out. By part V the syndicate agreed to pay Rs. 2,629-8-8 as rent and royalty at the rate of 8 per cent. of the sale value of all manganese ore. By clause 1 of part VII it was agreed that :

"The lessee shall pay the rent and royalty reserved by this lease at the time and in the manner provided in the Parts V and VI and shall also pay and discharge all taxes, rates, assessments and imposition whatsoever being in the nature of public demands which shall from time to time be charged, assessed or imposed upon or in respect of the mines or works of the lessee or any part thereof by authority of the Government of India or the Government of Bombay or otherwise except demands for land revenue..."

The appellant received from the syndicate, besides rents and royalty, Rs. 16,309 in the year ending July 31, 1951, and Rs. 39,515 in the year ending July 31, 1952, being 3/16th of the amount of rent and royalty payable to the appellant in accordance with the terms of Part V of the lease. The syndicate described this payment as "local fund cess." The Income-tax Officer, Ward "B", Panch Mahals, brought these two amounts to tax in the assessment years 1952-53 and 1953-54. In appeal to the Appellate Assistant Commissioner of Income-tax, Baroda Range, it was maintained by the appellant that the to sums were not taxable, because they represented local fund cess collected by him on behalf of the Government of Bombay or the Local Board, Panch Mahals, and in any event because they were receipts "of a causal and non-recurring nature." The Appellant Assistance Commissioner upheld those contentions of the appellant and directed that the said sums be excluded from the total income of the appellant.

In the view of the Income-tax Appellant Tribunal, the appellant received the two sums from the syndicate under the clause 1 of part VII of the lease agreement and not as local fund cess on behalf of the Government of the Bombay or of the Local Board, Panch Mahals, and the amounts were not receipts "of a causal and non-recurring nature." The Tribunal submitted a consolidated statement of the case under section 66(2) of the Income-tax Act in respect of the years of assessment and submitted the following questions for the opinion of the High Court of Bombay :

"(I) Whether the sum of Rs. 16,309/Rs. 39,515 received by the assessee from the syndicate is income for the purpose of the Indian Income-tax Act, 192 ?

(II) If the answer to the above question is in the affirmative, whether the income-receipt is exempt under section 4(3)(vii) of the Act by reason of its being of a causal and non-recurring nature ?"

In compliance with an order of the High Court, the Tribunal submitted a supplementary statement of the case observing that the lands in question which were "alienated villages" between August 1, 1950, and August 15, 1950, had ceased to be alienated villages in consequence of the application of the Bombay Taluqdari Abolition Act, 1949 (62 of 1949), that the total amount of assessment payable in respect of these villages was Rs. 1,222.92 and the local fund cess due in respect of the lands was Rs. 270.45 nP., that the total Jama payable to the appellant was Rs. 504.45 nP. and that the appellant under the Bombay Local Boards Act, 1923, to pay the cess as a percentage of land revenue and not of the Jama. The High Court, in the light of the supplementary statement of the case, recorded its answer on the first question in the affirmative, subject to the reservation that "the amount of cess which the appellant was legally liable to pay under the Bombay Local Boards Act was not subject to income-tax" and answered the second question in the negative. With certificate granted by the High Court, these appeals have been preferred.

The relevant statutory provisions bearing on the questions referred to the by the Tribunal may be summerised. By the Bombay Taluqdari Tenure Abolition Act, 1949 (62 of 1949), all the incidents of the Taluqdari tenure attaching to the lands comprised in the appellants estate were extinguished, and all Taluqdari were declared liable to payment of land revenue in accordance with the provisions Bombay Land Revenue Code, 1879, or Jama under an agreement or settlement recognised or declaration made under the Gujarat Talukdars Act. Under the Bombay Land Revenue Code, by section 3(13) "superior holder" is defined as meaning a landholder, entitled to receive rent or lent revenue from other landholders, whether or not he is accountable for such rent or land revenue or any part thereof to the Provincial Government and a "tenant" is defined in section 3(14) as meaning a lessee whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenants rights with possession. By section 45 all lands, whether applied to agriculture or other purposes, and wherever situate, are liable to pay land revenue to the Government according to the Rules enacted under the Code, except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force. Under the Bombay Land Revenue Code, liability to pay land revenue is imposed upon the landholder. Under the Bombay Local Boards Act, 1923 (6 of 1923), the State Government is authorised to levy, on the conditions and in the manner described, a cess at the rate of three annas on every rupee of -

(a) every sum payable to the State Government as ordinary land revenue.

(b) every sum which would have been assessable on any land as land revenue, had there been no alienation of land revenue, or

(c) every sum which would have been assessable on any land as land revenue, had the land not been talukdari land.

By section 96 of the Act 6 of 1923 it is provided that the cess described in section 93 shall be levied, so far as may been the same manner, and under the same provisions of law, as the lane revenue. A holder of unalienated and had therefore in addition to the land revenue to pay local fund cess at the rate of three annas on the land revenue assessed on the land. In respect of alienated lands, the land revenue assessed on the land may be wholly or partly remitted, but the local fund cess is levied as a fraction of the land revenue.

Under the terms of the lease with the syndicate it was stipulated that the syndicate shall pay all taxes, rates, assessment and impositions of a public nature. The effect of the covenant was that the syndicate will reimburse the appellant for local fund cess and other taxes paid by him. The local fund cess payable for the two villages demised by the appellant was, according to finding of the Tribunals, Rs. 270.45 being 3/16ths of Rs. 1,222.92 the amount of land revenue assessed on the lands. But the amounts paid by the syndicate for the two years in question considerably exceeded the local fund cess payable in respect of the lands. The syndicate believed that it was liable to pay to the appellant under clause 1 of the Part VII of the indenture of lease cess computed at the rate of three annas on a rupee of the amount of rent and royalty.

Transactions relating to property and contracts are of infinite variety and it is difficult to devise a precise definition of the expression "income" liable to tax under the Income-tax Act, without excluding some important categories thereof. The definition of "income" in section 2(6C) of the Income-tax Act, 1922, is an inclusive definition : it is devised for the purpose of the Act and includes diverse heads which in the normal connotation of the expression "income" would not be included. We have no desire in this case to enter upon the difficult task of devising an accurate definition of the expression "income". The observation of the Judicial Committee in Gopal Saran Narain Singh v. Commissioner of Income-tax that "Anything which can properly be described as income, is taxable under the Act unless expressly exempted", gives an indication of the difficulties of the problem.

It is common ground that the rent and royalty under the mining lease are income taxable under the Act, and an amount which is paid under a covenant directly related to the payment of rent and royalty would, in our judgement, also be taxable as income. The amounts paid have the quality which is, if not identical, closely similar to rents and royalty. It is immaterial that if the true position where appreciated, a syndicate may not have paid the amount. The amounts have in fact been paid by the syndicate, and have been received and appropriated by the appellant as if he was entitled to receive them. The difference between the amounts which the appellant received and amounts for which he could under the terms of the lease claim reimbursement, must therefore be regarded as income with in the meaning of the Indian Income-tax Act, and unless specially exempted, liable to

tax. The appellant did not purport to collect local fund cess on behalf of the State Government : nor did the syndicate pay the amount to his as an agent to the Government. The syndicate merely sought to discharge what it believed was its contractual obligation under the indenture of lease, and in doing so, it made payments which exceeded the local fund cess payable by the appellant.

We are unable to hold that the syndicate was an inferior holder under the appellant. The appellant was the holder of the land and he had granted a lease in respect of the land to the syndicate, and our attention has not been invited to any provision of the Bombay Land Revenue Code, 1879, which imposes liability to pay local fund cess upon the lessee who holds land under a lease from the landholder. Liability to pay land revenue and the local fund cess is imposed by the Bombay Land Revenue Code upon the appellant. Under the terms of Part VII, clause 1, of the indenture of lease, the syndicate had agreed to pay to the appellant the amount of land revenue and local fund cess which the letter may have to pay to the Government. But by collecting the amount from the syndicate under the terms of his contract, the appellant was not constituted as agent of the Government for recovering either the land revenue or local fund cess.

There is nothing in the Income-tax Act which prevents the revenue authorities from determining the quantum of the amount which is payable by the appellant as local fund cess, when that question properly arises before them in the course of proceedings for assessment. The Income-tax Officer is, within the limits assigned to him under the Act, a Tribunal of exclusive jurisdiction for the purpose of assessment of income-tax. He has under the Act to decide whether a particular receipt is income, and it is not predicated that he must make some person or body other than the assessee who may be concerned with that receipt as a party to the proceeding before he decides that question. As between the state and the assessee it is his function alone the to determine whether the receipt is income and is taxable. The determination by the income-tax Officer may be questioned in proceeding before superior Tribunals which are permitted by the Act, but the Income-tax Officer cannot be prevented from determining a question which properly arises before him for the purpose of assessment of tax, merely because his determination may not bind some other body or person qua the assessee.

It is maintained by counsel for the appellant that in the issued under the authority of Government of Bombay it is recorded that the local fund in respect of land holder under a mining lease is a fraction of the aggregate amount of rent and royalties under the lease. This plea is based upon the complete misconception of what is stated in the Manual of Revenue Accounts, 1951. Under the head "Miscellaneous Land Revenue" at page 41 certain directions are given about the entries to be made in the Tharavband in respect of "miscellaneous fluctuating revenue." The Manual, after setting out heads of fixed revenue, proceeds to set out the following heads of fluctuating revenue :

(i) Carrying Local Fund, and

(ii) Free of Local Fund.

Under the head fluctuating revenue "Carrying Local Fund" are non-agriculture rent or revenue from agriculturally assessed or unassessed lands for back years, for broken periods, or short periods less than five years and fees for brick kins and lime kilns erected on Government waste lands : (2) Lump

commutation-payments not being commutations in perpetuity of land revenue for building or any other non-agricultural purpose, including assessment for unauthorised occupation, and fine when levied for non-agricultural uses with permission, but not including fines levied as penalties, and "(2A) Rent and royalties under mining leases (usually collected at T)." But these are mere instructions to the village officers relating to the heads of revenue which are "to pass through the Tharavband." By the instructions it is not sough to be conveyed that local fund cess in respect of non-agricultural incomes subjected to local fund such as rent and royalties is to be levied at the rate different from the rate prescribed by the statue. The Bombay Local Boards Act, 1923, expressly provide that local fund cess in to be levied on land revenue whether the land is used for purpose is agricultural or non-agricultural at the prescribed rate by executive instructions the Act cannot be modified and has not been modified.

It was said that the syndicate may seek to recover from the appellant the excess amounts paid by it towards local fund cess. We were told at the Bar that after the proceeding for assessment in these appeals reached the High Court the Syndicate has filed a suit in the civil court against the appellant to recover the amounts paid by it. We are not in this case concerned with the merits of that claim. The appellant has received certain amount under a contract with the syndicate, and if that amount was income, the fact that the person who paid it may claim refund will not deprive it of its character of income in the year in which it was received.

The contention that this income was of a "causal and non-recurring nature" was abandoned before the Tribunal. It cannot be said that the receipt was produced by the chance or was accidental, fortuitous or from unforeseen sources of income. Assuming that the amounts sough to be included as income were paid as a result of some mistake on the part of the syndicate, they have not the characteristic of causalness, nor is it suggested that they are non-recurring.

The appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.