

COMMISSIONER OF INCOME-TAX, U.P.

v.

GAPPUMAL KANHAIYA LAL

[SAIYID FAZL ALI, PATANJALI SASTRI,
MEHR CHAND MAHAJAN and MUKHERJEA JJ.]

1950

May 26

Indian Income-tax (XI of 1922), s. 9 (1) (iv)—Income from property—Computation of annual value—Deduction of “annual charges not being capital charges”—Municipal house-tax and water-tax—Whether deductible—Nature of such charges—U.P. Municipalities Act (II of 1916), ss. 128, 149, 177.

The amount of house-tax and the amount of water-tax imposed by the municipal board of Allahabad under s. 128 of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under s. 149 of the said Act are “annual charges not being capital charges to which the property is subject,” within the meaning of s. 9 (1) (iv) of the Indian Income-tax Act, 1922, and should therefore be deducted from the *bona fide* annual value of the property determined under sub-sections (1) and (2) of s. 9 of the Indian Income-tax Act.

Judgment of the Allahabad High Court affirmed.

New Piecegoods Bazar Co. Ltd. v. Commissioner of Income-tax, Bombay [1950] S. C. R. 553) followed.

(¹) I.L.R. 1943 Bom. 628.

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APPEAL from the High Court of Judicature at Allahabad (Civil Appeal No. VI of 1949).

This was an appeal from the High Court, Allahabad (Iqbal Ahmad C. J. and Allsop J.) dated 31st August, 1944, in a reference under section 66 of the Indian Income-tax Act, 1922. The facts are set out in the judgment.

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

Gopi Nath Kunzru (K. B. Asthana, with him), for the respondent.

1950 May 26. The judgment of the Court was delivered by

Mahajan J.

MEHR CHAND MAHAJAN J.—This appeal from a judgment of the High Court of Judicature at Allahabad dated 31st August, 1944, raises the same points as have been discussed in Civil Appeal No. 66 of 1949 ⁽¹⁾. The Income-tax Appellate Tribunal referred four questions to the High Court of Judicature at Allahabad under section 66 (1) of the Indian Income-tax Act. These questions related to the year of assessment 1939-40. The High Court answered two of the questions in the affirmative and two in the negative. The two questions relating to the appeal are those that were answered in the affirmative and are as follows :—

“Whether (1) the amount of house-tax and (2) the amount of water-tax, imposed by the Municipal Board of Allahabad under section 128, sub-section (1) clauses (i) and (x), respectively of the United Provinces Municipalities Act, 1916, and paid by the owner as a lessor under section 149 of that Act should be deducted as an allowance from the *bona fide* annual value of the property determined under sub-section (1) read with sub-section (2) of section (9) of the Act, on the ground that such amount is an annual charge, which is not a capital charge to which the property is subject within the meaning of clause (iv) of sub-section (1) of section 9 of the Act.”

⁽¹⁾*New Piecegoods Bazar Co. Ltd. v. Commissioner of Income-tax, Bomba* [1950] S.C.R. 553.

Under section 128 of the United Provinces Municipalities Act, 1916, the municipality can impose a tax in the whole or any part of the municipality on the annual value of buildings or land or of both, and a water-tax on the annual value of buildings or land or of both. Every such tax on the annual value of buildings or land or both is leviable on the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Crown or from the Board, or on a building lease from any person. In any other case the tax is leviable from the lessor, if the property is let (*vide* section 149). Section 177 enacts that all sums due on account of a tax imposed on the annual value of buildings or lands or both shall subject to the prior payment of the land revenue, if any, due to His Majesty thereupon, be a first charge upon such buildings or lands.

It is apparent therefore that the provisions of the United Provinces Act in respect of the levy of the taxes are substantially similar to the provisions of the Bombay Act discussed in Civil Appeal No. 66 of 1949 ⁽¹⁾ For the reasons given in that appeal and as a result of that decision this appeal stands dismissed with costs and we consider that the High Court of Allahabad has answered the questions above mentioned correctly.

Appeal dismissed.

Agent for the appellant : P. A. Mehta.

Agent for the respondent : S. P. Varma.

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⁽¹⁾ [1950] S.C.R. 553.