

CASE NOTE: BOARD OF AGRICULTURE INCOME TAX V. SINDHURANI CHAUDHURANI 1957 SCR 1019

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• INTRODUCTION

In modern globalized economic world, all countries requires a substantial amount of revenue to govern themselves so many countries which are on path of development had witness tax reforms in recent years. Tax reforms in most of developing countries are to major extend influenced by local factors as well as internationalization of economic through international trade that took place between countries. Taxation facilities government in correcting fiscal imbalance, increasing level of saving, exchange control, etc in the economy. India, being a diverse country with huge population had to went through process of taxation reforms in consonance to its development strategy.

In India, agriculture is the backbone of economy and the country is entirely dependent on agriculture for fulfilling its basic food requirements. Indian government in its budget, laid down numerous schemes with a view to promote agricultural sector growth. One of the such scheme is exemption to agricultural income when it comes to its taxation under Income Tax Law.

The provisions of Income Tax provides reliefs to tax payer from taxation while calculating the Gross Total Income. Under Section 10 of Income Tax Act 2020-2021 agricultural income is exempted from tax provided the assessee under Income Tax Act proves that a specific income is exempt and falls within the boundary of particular clause. However in modern scenario, this exemption is prone to many misuse as it provides opportunities to individuals for tax evasion by disguising taxable income and black money under the shield of agricultural income and gain benefit. In current economic structure what comes under the head of agriculture income is clearly enunciated from the definition given by Income Tax Act under Section 2(1A).

‘Agriculture Income’ is defined as:- following shall constitute agriculture income under Section 2(1A) of Income Tax Act:

1. Rent and revenue got from agriculture land which is situated in India and used for agricultural related activities and purposes within the preview of Section 2 (1A)(a). Rent is understood as the consideration in lieu of right to use the land.
2. Any income which is derived from agriculture land by agriculture operations which also includes processing of agricultural produce so as to render it fit for the market of such produce.

Agriculture operations which are carried out on agriculture land are basically of two types- (1) basic operation & the subsequent operations.

Basic operation in terms of agriculture would incorporate cultivation of land and for that result include tiling of land, sowing of seeds on agriculture land, planting and all those operations that required efforts and skill on the part of human on the land.

Subsequent operations in terms of agriculture would incorporate operations that are carried out in order to preserve the produce and promote its growth. In addition to this incorporate operations which make produce fit for use in the market.

3. Any income which is derive from farm house subject to satisfaction of certain conditions mentioned in this regard in Section 2(1A).

Income derive from farm building is regarded as agricultural income if it satisfy two conditions as illustrated below-

The farm building should be on or in close vicinity of agriculture land and is one which the receiver of rent or the cultivator hence has connection with land, requires the building as house to stay or as storehouse or uses it for such situations in relation to agricultural purpose.

That the land is assessed by either by land revenue or local rate assessed and that is collected by government officers appointed to do so;

Or if above mention condition is not satisfied then land should not be located within particular region as mentioned in the section.

Necessary conditions for an income to be an agriculture income

- Income which individual gain should be from land.
- Such land must be situated in India.
- The land situated in India must be used to carry out agriculture operation
- Ownership of land is not must.

In order to have indepth understanding of agriculture income and its practical aspects the present assignment deals with the case in which aspect of agriculture income is dealt from different angels.

• **RESEARCH METHODOLOGY**

This assignment is based on doctrinal research in which data is collected through secondary resources which includes, Judgment of Supreme Court, articles, research papers, etc has been referred.

• **FACTS**

The present case deals itself with the character and purpose of the payment which is termed as 'Salami'.

Shrimati Sindhurani Chowdhurani was the assessee and had 8/9/ annas co-sharer in a zamindar estate known as "Prabhjoar Estate" in Assam. The rates of Salami estate varied from Rs 7 per bigha for forest land to Rs. 10 per bigha for other lands depending upon quality of land. However, the original assessee was Jyotindra Narayan Chowdhury who died on January 25, 1953 and on his death his widow and others were substituted.

The Zamindar business was to let out holdings against payments given by tenants to landlord. The area of land hold by the deceased assessee was a large one which he let out to various tenants on the conditions. One of the condition was that in order to be

tenant they will had to first pay a fee which is termed as ‘Salami’ and had to pay annual rent for the holding which is occupied by him.

The gross agricultural income of the assessee was Rs 89,633 and the income which comes in form of ‘Salami’ was Rs 9331 which was received from settlement of 414 various holding out. Out of this, 278 were holdings of virgin lands and 136 were described as auction-purchased lands.

Out of the gross income from ‘Salami’ 15 percentage has been allowed as collection charges. After separating 15 percentage from total income from ‘Salami’ the remaining Rs. 7934 is the matter of dispute in this case as whether the income from ‘Salami’ is the agriculture income or not.

• CONTENTION

For Appellant

a). The income in the form of ‘Salami’ which arose from the business of landlord’s i.e. letting out of his lands to tenants, is an income as it satisfy the test of “income” reason being the “regularity and periodicity” attached to receipt of Salami. Therefore, the amount received as Salami were “agriculture income” and comes within the Section 2 (a)(1) of the Act.

b). The rates of Salami changes with the quality of land in each estate and have no relation to rent which is consensually fixed and invariable. So Salami is revenue which is derived from land and is therefore income under the Act.

For Respondent

a) The Respondent submit that whether the single non-recurring Salami which is paid to landlord assessee by tenant once as consideration for the settlement of agriculture land at the time of granting lease can be held to be income within the meaning of Act.

b) The Respondent further submitted that whether the single non-recurring Salami which is not dependent on the rate of rent charged can be held to be income within the meaning of Act.

- **ISSUE**

Whether the amounts received by the landlord assessee as Salami are rent or revenue within the definition of “agriculture income” which is given under Section 2 (1A) of the Act and therefore liable to agriculture income tax under the Income Tax Act.

- **ANALYSIS**

Agriculture income comes under jurisdiction of State governments, has been exempted from the purview of income tax law. But what actually constitute agriculture income cannot be stated in a definite terms and depends on the facts and circumstances of particular case i.e. it satisfy the requirement of Section 2(1A). In zamindari system the big landlords gives their land to the poor in order to carry out agricultural activities and in lieu they have to make payments to the landlords for the use of land. Landlords fix rent which tenants had to give them when the landlords lease the land.

Long term lease where one time payment in the form of Salami as well as periodical rent are charged by the owner of property then in such case the value of services is limited to periodical rents or also extends to cover Salami also is considerable in determining its taxability in the act.

At there exists some difference between lease and ownership. In lease there is the transfer of right to enjoyment of property while ownership denotes a in toto control over the property. As heritability and transfer may be incidents which are common in both ownership and lease but it is in itself not sufficient to provide a person with absolute ownership of property.

Merely the use of word ‘Salami’ does not put it in the definition of agriculture income. As Salamis were quite natural and regular feature of the estates in which the landlords had share and there is periodicity. When a receipt which merely termed Salami can come

under agriculture income head or not if nothing more is stated in related to it, then it neither cannot be treated as a capital receipt and subject to exemption in taxation nor be treated as income and therefore assessable under income tax law. Salami may be a recurring or a periodical payment if it is given in the form of a fee or fine levied annually on the holder of rent free tenure to the higher land owning authority in return of services then it would come under the head of agriculture income.

Salami may not be in form of periodic payment or periodical payment if it is given as monetary benefit in cover of gratuity or offering on receiving the lease or for receiving any favour which may be either real or implied then such payment would be termed as capital receipt as the price paid by the tenant to landlord for small ownership he granted to tenant by transfer of land.

long term lease involves parting of right by the lessor in favour of lessee, in lieu of which money consideration is given & is termed as Salami. Salami is charged by the landlord whenever there is new settlement between the landlord and the tenant whether it is of piece of virgin land or of auction-purchased land. Such Salami is paid by the tenant to the landlord before constitution of their landlord tenant legal relationship. Thus, it is the payment by the tenant to landlord for being allowed to take possession of land for the purpose of cultivation under the lease.

The word Salami is described in the case of *Kamakshya Narain Singh v. CIT*¹ by Lord Wright as:

“The Salami has been treated as a capital receipt and it is the single payment made for the acquisition of right of lessees to enjoy the benefits granted to them by the lease. The general right under the lease may be regarded as a capital receipt and the money paid in guise of Salami to purchase it may properly be held to be payment on capital account”.

The court in number of cases define ‘Salami’ in light of different facts.

¹ (1943) LR 70 IA 180, 190

In the case of *Province of Bihar v. Maharaja Pratap Udai Nath Sahi Deo*,² stated that “where Salami cannot be regarded as payment of rent in advance, it will not be income and would therefore, not be taxable under the Income Tax act. As on the face of it Salami is not income and also it is impossible upon the facts as stated to say that Salami which is received constitute part and parcel of his income”.

In the case of *Raja Rajendra Narayan Bhanja Deo v. CIT*,³ the court stated that, “mutation fess were held to be agriculture income but that was the case of payment after the relationship of landlord and tenant had come into existence.

As in the present case the assessee had considerably large holdings, on which number of settlements were comparatively small, which includes both virgin land and auction purchased land settlements. The income which assessee derived and is in dispute in the case is not from same holdings at a regular period of intervals but are from several holding and not taken at regular interval but taken only once that it before the constitution of relationship. Also the preposition as to regularity and periodicity of Salami and a that it arose from the business of letting out his land is undermined by the fact that it not derived from same holding at regular intervals. The payment of Salami by the prospective tenant to lessor is the price in consideration for lessor agreeing to parting of his right in the agriculture holding in the favour of the proposed lessee.

Thus, leases were in practice in the Assam and had element of stability and permanency which is evident from the fact that in no case non-occupancy tenant evicted and his tenure was allowed to mature with the passing of time into an occupancy holding. Payment by way of Salami by the tenant to landlord is done in view to get in exchange or return an estate in land owned by the zamindar.

• OBSERVATION BY THE COURT

The 3 Judge bench comprising of N.H. Bhagwati, T.L. Venkatarama Aiyar and J.L. kapur observe that salami is the payment by the tenant to landlord for parting with his rights

² (1947) ILR 20 Patna 699, 722.

³ (1929) ILR 9 Patna 1.

under the lease of holding. In other words, it is the lump-sum payment in the form of consideration for what the landlord transfers to tenant under the lease. Thus, Salami is not rent and not be called revenue within the meaning of word which is used in the definition of agriculture income in Section 2 (1A) of the Act. Salami has the attribute of capital payment and is not revenue.

- **CONCLUSION**

The Apex Court in this case observe Salami as the prerequisite for the formation of landlord and tenant legal relationship. The connotation 'transfer' had different meaning in different case and in what sense it is being used by the individual in light of the situation. In some situation it represent the present status while in other case in present origin title. As the lessee had title to the land which he gets under the lease agreement on the other hand it also brought forth the that the owner absolute title in land as the lessee title is not over the title of owner. Thus, it changes with facts and situation of cases whether Salami is paid for the parting of interest or as rent or revenue, etc.