this aspect nor can I persuade myself to quash the impugned order on this ground.

(13) In the return filed by respondent 1, it was stated that the petition was pre-mature as no order removing the petitioner from his office had been communicated to him. It is now admitted that an order for his removal had been passed by the Governor of Punjab on August 19, 1971, and the only thing that remained to be done was to issue the notification. If the notification had been issued, the order would have taken effect immediately and the petitioner would have been deprived of his office. In fact, it had appeared in some of the newspapers that orders for the petitioner's removal had been passed. The petitioner was, therefore, justified in filing the petition even before the formal orders were communicated to him or notified and the petition cannot be dismissed as pre-mature. This objection, however, was not pressed at the hearing by the learned counsel for respondent 1.

(14) For the reasons given above, this petition fails and is dismissed but without any order as to costs.

N.K.S.

INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ;

THE COMMISSIONER OF INCOME TAX, PUNJAB, J. & K. & CHANDIGARH, PATIALA,—*Applicant.*

versus

SHRI ARJAN SINGH,—*Respondent.*

Income Tax Reference No. 16 of 1971.

October 12, 1971.

Income-tax Act (XI of 1922)—Sections 2(1) (a) and 4(3) (viii)—Agricultural land not assessed to land-revenue or subject to local rate in the current settlement—Income derived therefrom—Whether exempt as agricultural income under Section 4(3) (viii) read with Section 2(1)

(a)—Assessee taking on lease agricultural land belonging to the Central Government—Lease money due to the Central Government and recoverable as arrears of land revenue—Whether partakes of the nature of land revenue or a local rate.

Held, that before an income can be held to be agricultural income within the meaning of Section 2(1) (a) of the Income-tax Act, 1922, two conditions must co-exist: (1) that the income must be derived from land which is used for agricultural purposes; and (2) that the land is either assessed to land-revenue or is subject to a local rate assessed and collected by officers of the Government as such. It is the current settlement which has to be seen to determine whether land is assessed to land-revenue. Hence income derived from agricultural land not assessed to land-revenue or subject to local rate, is not exempt as agricultural income under Section 4(3) (viii) read with Section 2(1) (a) of the Act.

Held, that where an assessee takes on lease agricultural land belonging to the Central Government from the Military Estate Officer, which land is not assessed to the land-revenue or subject to local rate, the mere fact that the amount of the rental of the lease due to the Central Government is recoverable as arrears of land revenue does not make that amount partake of the nature of the land-revenue or a local rate. Whatever rent is paid by the lessee to the Central Government as the owner of the land under lease is merely an income derived by an owner by lease of its land and cannot in any sense be said to be payment of tax or land-revenue. Moreover, a reference to entries Nos. 45, 46 and 49 in List II of the Seventh Schedule to the Constitution of India reveals that 'land' is a State subject and the assessment of land-revenue and the collection thereof is a matter which lies purely within the jurisdiction of the State Government and not the Central Government.

Reference under Section 256(1) *of the Income Tax Act,* 1961, *made by the Income Tax Appellate Tribunal, (Chandigarh Bench), vide his order dated* 26th *February,* 1971, *in R.A. No.* 53 *of* 1970-71 *to this Court for opinion on the following question of law, arising out of I.T.A. No.* 1791 *of* 1968-69, *regarding Assessment Year* 1960-61.

"Whether on the facts and in the circumstances of the case, the income of Rs. 21,000 *was liable to be exempt as agricultural income under section* 4(3) *(viii) read with section* 2(1) *(a) of the Income-tax Act?".*

D. N. Awasthy and B. S. Gupta, Advocates, *for the appellant;*

Bhagirath Dass, Advocate with B. K. Jhingal and S. K. Hirajee Advocates, *for the respondent.*

JUDGMENT

Judgment of this Court was delivered by—

MAHAJAN, J.—(1) This order will dispose of Income Tax Reference Nos. 16 and 18 of 1971. The assessee in one is Arjan Singh, an individual, and in the other Gandhara Singh, again an individual.

(2) The assessments relate to the year 1960-61. The Income-tax Officer included a sum of Rs. 21,000 in the total income of each of the assessees on the ground that the income was not agricultural income. The assessees had taken 332 acres of land on lease jointly from the Military Estate Officer, Ferozepore and the land admittedly was used for agricultural purposes. The working of the lease resulted in a net profit of Rs. 42,000 and hence the profit of each of the assessees came to Rs. 21,000. Each of the assessee claimed before the Income-tax Officer that the amount of Rs. 21,000 was exempt from tax under section 4(3) (viii) of the 1922 Act equal to S. 10(1), read with section 2(1)(a) of the Income-tax Act, 1961. This contention was negatived by the Income-tax Officer on the short ground that the land was not assessed to land-revenue or local rate as required by section 2(1)(a). Appeals against this decision to the Appellate Assistant Commissioner by the assessees also failed. The assessees then preferred further appeals to the Income-tax Appellate Tribunal (hereinafter referred as the Tribunal). The Tribunal accepted the contention of the assessees and ordered the deletion of the amount of Rs. 21,000 from each of the assessees' total income. The Department being dissatisfied moved an application under section 256(1) of the Income Tax Act, 1961, to the Tribunal and the Tribunal has stated the following question of law for our opinion in case of both the assessees:—

> "Whether on the facts and in the circumstances of the case, the income of Rs. 21,000 was liable to be exempt as agricultural income under section 4(3)(VIII) read with section 2(1)(a) of the Income-tax Act. ?"

(3) The contention of the learned counsel for the Department is that the Tribunal has completely gone wrong in holding that the income from the land in dispute is agricultural income. The

contention is that the requirements of section 2(1)(a), which is in the following terms, are not satisfied:—

"2. In this Act, unless the context otherwise requires,—

(1) 'agricultural income' means—

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land-revenue in India or is subject to a local rate assessed and collected by officers of the Government as such;"

One matter is beyond the pale of controversy, namely that two conditions must co-exist before an income can be held to be agricultural income:—

(1) that the income must be derived from land which is used for agricultural purposes; and

(2) that the land is either assessed to land-revenue or is subject to a local rate assessed and collected by officers of the Government as such.

See in this connection *Commissioner of Income-tax West Bengal, Calcutta* v. *Raja Benoy Kumar Sahas Roy* (1) and *Srish Chandra Sen* v. *Commissioner of Income-tax, West Bangal* (2). The Tribunal also proceeded on this basis but on a curious reasoning that the rent paid to the Central Government is tantamount to land-revenue has held that the income in dispute is agricultural income.

(4) It will be proper at this stage to set down the reasoning of the Tribunal in their own words:—

"....So the Army authorities who leased out the agricultural land represent the Central Government. He has paid the rent to the Army authorities who represented the Central

(1) 32 I.T.R. 466.
(2) 41 I.T.R. 340.

Government and it was credited to the land revenue account by the said authorities. As far as the assessee is concerned, the Department accepts that the income from the cultivation of the land is agricultural income. But they deny him the benefit of exemption because the land is not assessed to land revenue in the limited sense as the Departmental representative wants us to take it. The assessee has parted with money to enjoy the fruits of the land. The army authorities have treated it as land revenue. Where lies the fault of the assessee ? The Army authorities wanted the assessee to pay the rent which they knew in their minds to be land revenue and the assessees have paid the same. You may call the rent, the amount which the assessees have paid, by any name, but the amount paid by the assessees is relatable to the land and only to the land and remains to be so. The land is agricultural. Agricultural land produces agricultural products and, therefore, can it be presumed that the amount which the assessee paid to the Army authorities to enjoy the benefit of the use and the limited possession of the land by growing agricultural products was anything else but an amount paid in relation to the land on a definite pre-determined basis? It may not be land revenue paid in the normal sense as is commonly understood but it is a payment on a determined basis which is relatable to and related to the agricultural land.

Coming to the other argument of the learned departmental representative that the land exempted from the payment of land revenue is not the land assessed to land revenue within the meaning of section 2(1) (a) of the Income-tax Act: The land may be assessed to land revenue. The land may be exempted from land revenue by the Government for considerations of the State policy. If a land is exempted from land revenue by an order of the Government, the exempted land does not pay land revenue but it was once assessed to land revenue. It has been exempted from the payment of land revenue. Does it mean that the exempted piece of agricultural land ceases to be agricultural land ? No, can

we say that it was not assessed to land revenue? No. Exemption from payment of land revenue pre-supposes assessment to land revenue otherwise the exemption loses its significance. The question can be asked: exemption from what ? The answer is: exemption from payment of land revenue. This is the case with cantonments. The Government has thought it fit in its wisdom to leave the administrative control and other functions of the areas declared as Cantonments to the Army authorities . The reason is simple and understandable. The Cantonments are the nerve centres of the Army. Army must enjoy exclusive control over the areas so that their military operations and manoeuyres are not unduly hampered with by the civil administration which could adversely affect the efficiency of the army and consequently the security of the State. This is an overriding and weighty consideration in the interest of the country and State. But can it be said that the land which is now called a Cantonment and was once an agricultural land, assessed to land revenue has ceased to be so because it has been granted exemption from the operation of the Land Revenue Act, of the State.

Exemption follows assessment. Once a land is assessed to land revenue, it is a land assessed to land revenue and the subsequent exemption cannot change its nature. Take an example: An Army Officer renders meritorious services during the course of a war or when the country is in a state of belligerancy. Recognising the services rendered by the officer, the Government (may be the Central Government or the State Government) awards him a huge tract of agricultural land and further exempts the said land from the land revenue. The officer leases it out to another person on payment of some rent may be nominal or exhorbitant, may be fixed for dependent on the yield from year to year. He so leases it out as the officer is still in active service and is, therefore, not in a position to cultivate himself. When the lessee earns an income from the cultivation of the said land, can that agricultural income be taken as a non-agricultural income of the lessee and hence taxable under the Income-tax

Act because the land is exempt from the payment of land revenue and hence not assessed to land revenue. Or take another set of circumstances. Supposing the said officer leases out the land to a bona-fide lessee on the condition that the said officer shall not charge any rent from the lessee but share the yield or the income from the agricultural land. Can the share from that income be assessed in the hands of the officer for the reason that even when undoubtedly, the yield is from agricultural land, but as the land is exempt from land revenue it should be taken as not assessed to land revenue. Hence the exemption under the Act is no more available to the officer. If it were to be taken to be so, the very purpose of the reward would be defeated. That is not what the Government intended. What was not intended to be by the Government cannot be done by the Revenue Collectors of the Government. May be of the State Government or the Central Government. What the Government intends must be intended by those who collect the revenue for the Government and the Revenue Collectors cannot but intend what the Government intended. If it was to be otherwise, the two wings of the Government would be pulling in opposite directions. When you pull in opposite directions, you remain where you are. This renders the revenue machinery unworkable. That cannot be as it should not be. What canot be because it should not be, cannot be permitted."

(5) It appears to us that the Tribunal has completely gone off the mark. There is no warrant for the proposition that rent paid to Army authorities for land leased out by them is land-revenue. There is no basic difference between the lease of land not assessed to land-revenue and assessed to land-revenue belonging to the Central Government and leased out by it on rent. The rent so received would not be land-revenue. It is immaterial if the land belonging to the Central Government is exempt from land-revenue. If the Central Government leases out such land, the rent received cannot be termed as land-revenue. The Tribunal seems to have forgotten that land is a State subject and the right to recover land-revenue only accrues

to the State Government and not to the Central Government. The Union of India cannot levy land-revenue or local rate. In this connection, reference may be made to entries Nos. 45, 46 and 49 in List II of the Seventh Schedule to the Constitution of India.

(6) There is no warrant for the view that if land is exempt from land-revenue, it is necessarily assessed to land-revenue, at one time. Land-revenue is imposed during the course of a settlement. Excepting Bengal, where there is a permanent settlement, the settlements are made every twenty years. The land may be subject to payment of land-revenue in one settlement and may be exempt from its payment in the other. It is the current settlement which has to be seen to determine whether land is assessed to land-revenue. So far as the lands in dispute are concerned, they are not assessed to land revenue in the current settlement. No evidence has been led to show that during the current settlement these lands were assessed to land-revenue and later on exempted. Moreover, there is no presumption that a land in a cantonment was necessarily agricultural land. In one sense all lands can be used for agricultural purposes, but it is not necessary that what can be used for agricultural purposes is necessarily agricultural land within the meaning of section 2(1) (a). For instance, sites in towns and villages within the *Lal Lakir* have never been considered agricultural lands though they may be used for agriculture. Such lands are not assessed to land-revenue. Even lands within a cantonment could have been assessed to land-revenue, but for the fact that such lands belonging to the Central Government are exempt from being so assessed. However, there could be a special order to the contrary. In that case lands within the military cantonment would be assessed to land-revenue.

(7) The warrant for exemption of lands in Military cantonments is to be found in clause 1 of Appendix XV in Douie's Settlement Manual (4th edition) which reads thus:—

> "All lands in a military cantonment and all village sites of ancient standing will be exempt from assessment in the absence of special orders and if exempt heretofore."

Paragraph 461 of the said Manual deals with assessment of land in civil stations and cantonments and is in the following terms:—

> "Instructions regarding the assessment of land in civil stations and cantonments will be found in Appendix XV, in which have also been embodied instructions issued by the Government of India regarding the assessment of land in municipalities."

(8) It is, therefore, clear that lands in military cantonments would not be assessable to land-revenue unless there is a special order therefor.

(9) In our opinion, the Tribunal's decision cannot be sustained, either on principle or on authority. The mere fact that any sum due to the Central Government is recoverable as arrears of land-revenue does not make that amount partake of the nature of the land-revenue or a local rate. The assessment of land-revenue is a matter which is purely within the jurisdiction of the State Government. Whatever rent is paid by a lessee to the Union of India cannot, in any sense of the term, be land-revenue.

(10) The matter can be approached from another standpoint. The Union of India is the owner of lands. It has leased the lands and in the capacity of a lessor it is getting the rent. Therefore, whatever rent it gets can in no way be said to be payment of tax. It is merely an income derived by an owner by lease of lands. Moreover, the basic idea of exempting agricultural income is that the land which yields income is already assessed to tax, i.e. the land-revenue and in spite of that the legislature has given the power to tax agricultural income to the State legislature and not to the Central legislature. This reinforces the contention of the learned counsel for the Department that the rent paid on lands belonging to the Union of India can in no sense be said to be land-revenue.

(11) The example given by the Tribunal of a grantee of land for war services who has leased the land is not apt. In the first instance, when such a grant is made it is either of land or of revenue. It can be both of land and revenue, but in no case the Government exempts the land from land-revenue and if the Government was to exempt

the land from land-revenue, the land in that instance would not be assessed to land-revenue and it would mean that the income from that land would not be agricultural income. However, this example does not furnish an answer to the problem which the Tribunal was called upon to determine. Effect has to be given to the plain meaning of the statute and two conditions mentioned in section 2(1) (a) have to be satisfied before the income can be regarded as agricultural income. One of these conditions is not satisfied in the present case. That being so, the income from such land cannot be treated as agricultural income.

(12) For the reasons recorded above, we answer the question referred to us in the negative, i.e., in favour of the Department and against the assessees. However, we leave the parties to bear their own costs.

B.S.G.

APPELLATE CIVIL

Before H. R. Sodhi, J.

SOHAN SINGH,—*Appellant.*

versus

JAWALA SINGH ETC.,—*Respondents.*

Regular Second Appeal No. 137 of 1969.
Treated as Civil Revision No. 1174 of 1971.

October 15, 1971.

Code of Civil Procedure (V of 1908)—Order 9, rule 2, Order 17 rules 2 and 3—Plaintiff failing to deposit process fee for the service of unserved defendants—Court ordering dismissal of the suit— Such dismissal—Whether to be under order 9, rule 2 and against the unserved defendants only.

Held, that it is the substance of the order and the circumstances in which it is made that have to be taken into consideration in order to determine as to under what provisions of law the order was passed or must in law be deemed to have been passed and no hard and fast rule can be laid down. It also does not matter as to what rule has been cited by the Court