

(1978) 02 AHC CK 0067

In the Allahabad High Court

Case No : Income-tax Reference No. 133 of 1974

Addl. Commissioner of Income Tax

APPELLANT

Vs

Virendra Singh

RESPONDENT

Date of Decision : 16-02-1978

Acts Referred:

Income Tax Act, 1922 — Section 4(1), 5(1)

Income Tax Act, 1961 — Section 263

Land Acquisition Act, 1894 — Section 34

Citation : (1979) 118 ITR 923

Hon'ble Judges : Satish Chandra, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; R.R. Misra, for the Respondent

Final Decision : Disposed Off

Judgement

Satish Chandra, J.—The assessee, a retired Deputy Collector, owned certain lands. In February, 1959, the Bihar Government acquired an area of 23"7 acres belonging to the assessee. The compensation was determined at Rs. 86,070-92, including interest of Rs. 2,506"92 up to the end of August, 1959. This amount was paid to the assessee. The assessee felt dissatisfied. He made a reference to the District Judge, who gave an award on 12th January, 1962, determining the compensation payable to the assessee at Rs. 6,99,648.50. On appeal by the Bihar Government, the Patna High Court, by an order of 28th September, 1967, determined the compensation at Rs. 3,32,632.50. This was in addition to the amount fixed by the Land Acquisition Officer. On this additional amount the assessee was paid an interest amounting to Rs. 1,68,176 which was actually paid on 16th December, 1967.

2. The assessee filed returns for the years 1960-61 to 1968-69, spreading over the amount of interest in these various years. The ITO upheld the spread-over and taxed the assesses on his returns.

3. The CIT, acting u/s 263 of the I.T. Act, 1961, held that it is well settled that

the income, is said to accrue when it comes into existence or the right to receive it comes into existence. It appears that the assessee's right to receive the interest came into existence only in consequence of the decision of the High Court quantifying the amount of compensation and directing the payment of interest thereon. The ITO had no power to relate back income that accrued and arose in a subsequent year to earlier years. He set aside the assessment orders and directed the ITO to assess the entire interest income in the year 1968-69.

4. The assessee appealed to the Tribunal. The Tribunal held that under the Land Acquisition Act the right to compensation and Interest starts from the date on which the land was taken over by the authorities. The assessee was not a dealer in properties, and, therefore, there was no question of maintaining accounts for the amount of compensation. The right to interest started on the date on which the assessee's land was taken over, i.e., on 24th February, 1959, and the date on which the amount was actually determined had no relevance to the taxability of the income of interest. It, therefore, upheld the assessee's claim and set aside the order of the Commissioner.

5. At the instance of the Commissioner the Tribunal has solicited our opinion on the question whether the amount of Rs. 1,68,179 was taxable in the assessment year 1968-69 or in the previous years beginning from 1960-61.

6. u/s 4(1)(b)(i) of the Indian I.T. Act, 1922, as well as Section 5(1)(a) and (b) of the I.T. Act, 1961, income is chargeable to tax in the year in which it, inter alia, accrues or arises. In *Laxmipat Singhania Vs. Commissioner of Income Tax, U.P.*, the Supreme Court observed that it is not open to the ITO, if income has accrued to the assessee and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as income of another year on the basis of receipt.

7. It is well established that if an assessee acquires the right to receive the income, the income accrues, though it may be received later on, on its being ascertained. If it is a debt, the fact that the amount has to be ascertained does not make it any the less a debt if the liability is certain, and what remains is only a quantification of the amount--See *Commissioner of Income Tax, Bombay, City II Vs. Goverdhan Ltd.*, .

8. In another case the Supreme Court held that when the right to receive the income becomes vested in the assessee, it is said to accrue or arise--See *Commissioner of Income Tax, Gujarat Vs. Ashokbhai Chimanbhai*, .

9. The question as to the nature of interest paid under the Land Acquisition. Act, 1894, and the occasion of its taxability was considered by the Supreme Court in *Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab*, . Section 34 of the Land Acquisition Act provides :

"When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with

interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

10. The Supreme Court noticed the various provisions of the Land Acquisition Act, and held that the interest was not determined u/s 23 which requires computation of compensation. Instead, payment of interest is provided for separately u/s 34, in Part V of the Act, under the heading "Payment". That is so because interest pertains to the domain of payment after the compensation has been ascertained. It is the consideration paid either for the use of the money or for forbearance from demanding it after it has fallen due. It was held (p. 155) :

"It is as it were that from that date (namely, the date of dispossession) the Government withheld the compensation amount which the claimant would be entitled to under the provisions of the Act. Therefore, a statutory liability has been imposed upon the Collector to pay interest on the amount awarded from the time of his taking possession until the amount is paid or deposited,"

11. The Court went, on to hold that the legislature expressly used the word "interest" with its well-known connotation in Section 34 of the Act. It is, therefore, reasonable to give that expression the natural meaning it bears.

12. The court referred to the House of Lords' decision in Westminster Bank Ltd. v. Riches [1947] 28 TC 159; 15 ITR 86, where it was observed that interest was compensation for the deprivation of money. It would be immaterial whether the money was due to him under a contract, express or implied, or statute, or whether the money was due to him for any other reason in law. In either case the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was compensation. The compensation so payable is properly described as interest.

13. It is thus clear that the requirement of paying interest creates a debt. It is as if the assessee had lent the amount of compensation to the State Government and became entitled to receive interest for the time taken in its repayment. The right to interest u/s 34 accrued on the date on which the Collector took possession. It was a right in present. It recurred from day to day throughout the years in between the two events, namely, dispossession and actual payment. It continued to accrue in each of the succeeding years. In the premises, only that amount of interest income could be taxed in a particular assessment year which accrued in that year.

14. The assessee was a retired Deputy Collector. He was not carrying on any business in properties. He was not maintaining any accounts. The question whether the accounts are maintained on mercantile or cash basis was irrelevant.

15. This view finds support in the decisions of the Mysore High Court in Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, , the Punjab High Court in Commissioner of Income Tax Vs. Dr. Sham Lal Narula, , the Madras High

Court in T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, and of the Orissa High Court in Joyanarayan Panigrahi Vs. Commissioner of Income Tax, .

16. The decision in Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax, is not at all material. There the Andhra Pradesh High Court considered the true nature and character of compensation paid for acquisition of land. In that case it was found that the assessee had purchased the site and the buildings in the course of a profit-making scheme. It was from this point of view that it was held that the compensation received by the assessee was revenue in nature.

17. The case of Commissioner of Income Tax Vs. Motilal Padampat Sugar Mills Co. (P.) Ltd., cited by the revenue is equally distinguishable. There also the purchase of machines, for which damages were allowed by the court, was itself a business transaction. The assessee was maintaining its business accounts on mercantile basis. Therefore, it was held that the receipt of compensation was taxable in the year in which it accrued and not in the year of receipt. We have no such problem.

18. The ITO was correct in spreading over the amount of interest through the years in which it, had accrued.

19. In the result, the question of law referred to us is answered in the negative, in favour of the assessee and against the department. The assessee will be entitled to costs, which are assessed at Rs. 200.