
(2003) 01 KL CK 0085

In the High Court Of Kerala

Case No : IT Ref. No. 34 of 1999 & IT Reference No. 34 of 1999 21 January 2003

Alexander George

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Income Tax Act, 1961 — Section 2(14), 45(1)

Land Acquisition Act, 1894 — Section 11, 16, 17, 4, 9

Citation : (2003) 182 CTR 277

Hon'ble Judges : S. Sankarasubban, J; A. Lekshmikutty, J

Bench : Division Bench

Advocate : C. Kochunny Nair and Dale P. Kurien, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

S. Sankarasubban, J.—This reference is at the instance of the assessee. The year in question is 1986-87. The facts of the case are as follows :

2. Assessee was the owner of 2.47 acres of land situated in Thrikkakara Panchayat. The assessee received a total sum of Rs. 15,56,015 as compensation on acquisition of the land by the State Government. Before the AO, the assessee had claimed that it was agricultural land and so the capital gains arising on the transfer was not liable to tax under the IT Act. The AO did not accept that claim and he prepared to make the assessment of the capital gains at Rs. 13,33,987.

3. In the assessee's appeal, the CIT(A) held that the capital gains arising on the transfer of the land constituted income within the meaning of Section 2(14) of the Act and so it was rightly brought to tax. Another contention that the assessee had raised before the CIT(A) was that the capital gains, if at all taxable, was to be assessed for the asst. yr. 1987-88 and not for the asst. yr. 1986-87. The CIT(A) did not agree and his finding was that the land was taken over by the State Government on 14th May, 1985, invoking the urgency provisions in the Land Acquisition Act.

4. Aggrieved by the above order, the assessee filed second appeal before the Tribunal. The main contention taken by the assessee before the Tribunal was that the CIT(A) had erred in holding that the capital gains arising on the acquisition of the property was rightly brought to tax for the asst. yr. 1986-87, whereas according to the assessee, it was assessable for the asst. yr. 1987-88. The Tribunal took the view that the transfer took place in the year ending on 31st March, 1986. Another contention raised before the Tribunal is that since the notification including the Thrikkakara was cancelled in 1994, the compensation cannot be included as capital gains. Thus, the appeal was dismissed by the Tribunal.

5. On the basis of the above facts, the following substantial questions of law are raised by the Tribunal:

"(1) Whether the Tribunal was right in holding that the transfer of the property under the Land Acquisition Act had taken place in the year ending 31st March, 1986 and so the capital gains arising in the transaction was assessable for the asst. yr. 1986-87 ?

(2) Whether the Tribunal was right in holding that the agricultural land in Thrikkakara Panchayat qualified as capital asset for the asst. yr. 1986-87 even though Thrikkakara is not appearing in the second Notification No. 9447/F issued on 6th Jan., 1994 ?"

6. We heard learned counsel for the assessee and learned counsel for the Revenue.

Learned counsel for the assessee argued that the land vested in the Government under the Land Acquisition Act only after the award is passed. The award in this case was passed not in the asst. yr. 1985-86, but in the asst. yr. 1986-87. The question for consideration is when the property vested in the Government. An extent of land measuring 2.7929 hectares and situated in Thrikkakara South Village in Kaniyannur Taluk, Ernakulam district, was acquired by the Government. The Government accorded sanction to invoke the urgency clause. Notification u/s 3(i) of the Kerala Land Acquisition Act was published in the Malayalama Manorama daily dt. 7th Oct., 1984, and Mathrubhumi daily dt. 3rd Oct., 1984. Since the Central Land Acquisition Act was amended, a revised composite notification was issued u/s 4(1) of the Land Acquisition Act. This was on 28th Jan., 1985, and 31st Jan., 1985. The declaration u/s 6 of the Land Acquisition Act in respect of the acquisition was approved by the Government on 24th April, 1985, and published on 29th April, 1985. The enquiry u/s 9 of the Land Acquisition Act was conducted on 17th July, 1985, after giving due notice to the parties. Possession was taken on 29th Jan., 1985. The compensation was paid on 1st April, 1986. It is seen that under the award interest was given for the additional compensation from 29th Jan., 1985, to 14th May, 1986.

7. The first question to be considered is whether the Tribunal was right in holding that the transfer took place in the year 1986. Section 2(47) defines "capital

asset" includes compulsory acquisition under any law. Section 2(14) of the above Act defines "capital asset", Regarding agricultural land, the definition says that it does not include agricultural land in India not being land situated in any area within such distance, not being more than eight kilometres away from the local limits of any municipality or cantonment board (as the Central Government may) having regard to the extent of and scope for urbanisation of that area and other relevant considerations, specify in this behalf by notification. So far as the Land Acquisition Act is concerned, there are two methods for acquisition; one is by ordinary mode and the other is by resorting to urgency clause. In the ordinary mode, the notification is issued u/s 4 whereby it is made known that a certain land is likely to be acquired for a public purpose. An opportunity was (sic-is) given to the owner of the land to file his objection to the acquisition. After considering the objections, if the Government wants to go ahead with the acquisition, then a declaration is issued u/s 6. Thereafter, an award enquiry is conducted. The award is passed u/s 11 of the Land Acquisition Act. It is after passing the award that a decision is taken. Section 11A is as follows :

"The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse."

8. Section 16 of the Land Acquisition Act says that when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Thus, in the ordinary mode of acquisition, possession is taken after the award is passed. After the award is passed, the land vests in the Government. But so far as the present case is concerned, the acquisition is under the urgency clause. We have to find out whether there is difference in the vesting of land when acquisition is made as per urgency clause, In the case of urgency clause, a common notification under Sections 4 and 17 is issued. Thereafter notice u/s 9 is issued. Section 17 says that in cases of urgency whenever the appropriate Government or the District Collector so directs, the Collector, though no such award has been made may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1) take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances. Thus, so far as the urgency clause is concerned, possession can be taken after the Section 9 notice and such land shall vest in the Government. In the ordinary mode, possession is taken only after the award is passed. The contention of the learned counsel for the assessee is that the possession is not taken under the Land Acquisition Act and hence, in this case the crucial date taken is when the award was passed. We don't agree with the contention of the learned counsel for the assessee, Even under both clauses vesting takes place only after the possession is taken. Taking possession earlier cannot be taken advantage.

9. A similar contention arose in the decision reported in 1983 KLT 112. In that

case what happened was that the land was surrendered by the party to the State. Here also, the decision is similar excepting that the clause invoked was urgency clause. Even before Section 9 notice, the land was given possession. Hence, it is not necessary to take again. We are of the view that vesting of the property takes on a different footing so far as the present case is concerned.

10. The second contention is with regard to the application whether the land is assessable for capital gains in the Notification dt, 6th Feb., 1973. In that notification, in item 22, against the Municipality of Cochin, the following areas are notified for the purpose of Section 2(14) : "Areas covered by Thrikkakara, Tripunithura and Kalamassery Panchayats". Thus, the area is treated as capital assets for the purpose of Section 2(14). Here, the assessment year is" 1985-86. This notification was in existence on that day and hence, the assessee was liable to be taxed. On 6th Jan., 1994, the Central Government issued another notification in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance), dt. 6th Feb., 1993. In that notification in item 12, against Kerala, 3 Kochi the following areas are notified: "Areas forming part of Eloor and Maradu Panchayats upto a distance of 8 kms. from the municipal limits". So in 1993 Notification, the properties in Thrikkakara have been excluded. The argument of the learned counsel for the assessee is that since the notification deleted the Thrikkakara Panchayat, which came into force during the pendency of the appeal, it can be taken note of and if that be so, the compensation will not amount to capital assets. According to us, this argument cannot be accepted. Normally, the proceeding is to be completed on the basis of law that was existing at that time.

11. Learned counsel for the assessee cited certain decisions before us. But according to us, those decisions are not applicable to the facts of the present case. In the "Principles of Statutory Interpretation" by Justice G.P. Singh, Fourth Edition, at p. 280, it is stated thus : "Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication"--vide *Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal*, .

12. We are of the view that in this case, the notification applies to the Thrikkakara Panchayat. Reference is answered as follows :

Question Nos. 1 and 2 are answered in the positive and in favour of the Revenue and against the assessee.