
(2010) 04 AHC CK 0063
In the Allahabad High Court
Case No : Writ Tax No. 9 of 1983 (AY 1978-79)

Anand Babu Agarwal

APPELLANT

Vs

ITO and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Income Tax Act, 1961 — Section 144A, 264

Citation : (2010) 04 AHC CK 0063

Hon'ble Judges : Rajes Kumar, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In the State of U. P. the zamindari system was abolished by the U. P. Zamindari Abolition and Land Reforms Act, 1950. On the abolition of zamindari, the State of U. P. issued bonds to the ex-zamindars/inter-mediaries known as U. P. Zamindari Abolition Compensation Bonds (hereinafter referred to as the "compensation bonds") and U. P. Zamindari Abolition Rehabilitation Grant Bonds (hereinafter referred to as the "rehabilitation bonds") wherein compensation was payable to bond holders or their successors in equal annual instalments spread over 40 years. The bonds were transferable. The compensation bonds were interest-bearing whereas the rehabilitation bonds were without any interest.

2. The Petitioner Anand Babu Agarwal in the year 1970 purchased compensation bonds of the face value of Rs. 3 lakhs and rehabilitation bonds of the face value of Rs. 5 lakhs for Rs. 99 thousand and Rs. 98 thousand, respectively. The interest received from the compensation bonds was duly disclosed by the Petitioner for all assessment years and for the assessment year 1978-79 as interest from securities. The compensation received was disclosed as capital receipt. The assessment for the assessment year 1978-79 was finalised on 13-11-1978, treating the amount of compensation received in excess of cost of the bonds as capital receipt. However, for the assessment year 1979-80, the amount of Rs. 28,224 received as compensation from the bonds again shown as

capital receipt was not accepted and a reference was made u/s 144A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for suitable direction about the taxability of the aforesaid amount as part of the revenue receipt. The Inspecting Assistant Commissioner of Income Tax vide order dated 30-1-1981, directed the Income Tax Officer to reopen all earlier assessments pertaining to the Petitioner and to tax proportionate realisation of amount of compensation over and above the cost of the purchase of the aforesaid bonds. The said order was assailed by the Petitioner in revision u/s 264 of the Income Tax Act which was disposed of by the Commissioner of Income Tax vide judgment and order dated 20-1-1982 and the matter was remanded to the Inspecting Assistant Commissioner who again vide order dated 2-2-1982, affirmed his earlier view. This order was again challenged by the Petitioner in revision u/s 264 of the Act which has been dismissed vide order dated 17-12-1982

3. The aforesaid order dated 17-12-1982, and the order dated 2-2-1982, have been impugned by the Petitioner in the present writ petition.

4. We have heard Sri Ravi Kant, learned senior advocate assisted by Sri Manoj Pandey, learned Counsel appearing on behalf of the Petitioner and Sri Shambhu Chopra, learned standing counsel.

5. The only question involved in the present writ petition is whether the excess amount of Rs. 28,224 received by the Petitioner as compensation under the bonds over and above the purchase price of the bonds was a capital receipt or a revenue receipt liable to tax.

6. The submission of Sri Ravikant is that the compensation received by the Petitioner is in the nature of capital receipt and, therefore, the contrary view taken by the authority below is not only arbitrary but also manifestly erroneous under law.

7. In support he has placed reliance upon two Division Bench decisions of the Karnataka High Court, one reported in Addl. Commissioner of Income Tax Vs. Syndicate Bank (Formerly Syndicate Bank Ltd.), Addl. Commissioner of Income Tax, Karnataka Vs. Maharashtra Apex Corporation Ltd., . He has also tried to distinguish the Division Bench decision of the Bombay High Court reported in Commissioner of Income Tax, Bombay City-i Vs. Scindia Workshop Ltd., which has been relied upon by the authorities below in passing the impugned orders.

8. It is not in dispute that in the relevant assessment year under consideration apart from interest, a sum of Rs. 28,224 was received by the Petitioner as compensation in excess of the purchase value of the bonds. The said amount was shown as capital receipt not liable to tax. The authority below relying upon the decision of the Bombay High Court in Commissioner of Income Tax, Bombay City-i Vs. Scindia Workshop Ltd., wherein it was held that the amount received by the Assessee in excess of the capital investment amounts to income for the purposes of assessment in each year, dismissed the objections as well as the revision of the Petitioner.

9. In the aforesaid case before the High Court the Assessee was doing business of purchasing and selling of securities and bonds of the like nature. The Assessee had invested large sums in the said business and, as such, was commercially involved in the activity of earning profits through sales and purchases of bonds. In the above circumstances, it was held that the investment made by the Assessee in the bonds was with an eye to earn profit and, as such, the receipt of such excess amount on the capital investment would be accountable as income.

10. In the case at hand, the bonds were purchased by the Petitioner in the year 1970 and till the relevant assessment year under consideration, i.e., 1979-80 no further sale or purchase of any such bonds was made by him. It was a single transaction. Therefore, it is a clear case where the Petitioner was not involved in the business of sales and purchases of such bonds and he was not a dealer in securities. Therefore, the decision of the Bombay High Court in Commissioner of Income Tax, Bombay City-i Vs. Scindia Workshop Ltd., is distinguishable on the facts and the principle laid down therein would not apply in the present case.

11. The finding of the Commissioner that the Petitioner was carrying on business in such bonds for a long time is based on assumption as the Petitioner happened to be a partner of the firm M/s. Brij Behari Lal and Sons that was dealing in electrical goods and Government securities. The Commissioner mistook the Petitioner as a dealer in Government securities inasmuch as the bonds were undisputedly purchased by the Petitioner in his personal capacity and not in the name of the firm or as a partner of the firm. The assessment of the Petitioner was also in his individual capacity. The business of the said firm was not at all material or relevant for the assessment of the Petitioner in his individual capacity in respect of the receipts under the said bonds. Accordingly, the said finding is not sustainable and is apparently perverse in nature.

12. The Karnataka High Court in an identical case concerning the U. P. Zamindari Abolition Bonds in the case of Addl. Commissioner of Income Tax, Karnataka Vs. Maharashtra Apex Corporation Ltd., held as under (page 619):

... the annual payments received by the Assessee in respect of these bonds, represent partly capital and partly interest and Income Tax is payable only on the portion representing interest.

13. The Division Bench of the Karnataka High Court in laying down the above principle relied upon the ratio of the law laid down in Andrew Scoble v. Secretary of State for India (1903) 4 TC 618 wherein Lord Lindley of the House of Lords had observed that such annual payment was nothing more than the payment of equal instalments of the purchase money with interest and that such instalments were not at all profits or gains but were partly payments of principal money and partly profit in the shape of interest.

14. A similar view was also expressed by the Division Bench of the Karnataka High Court in the case of Addl. Commissioner of Income Tax Vs. Syndicate Bank (Formerly Syndicate Bank Ltd.), which also related to the compensation and

rehabilitation bonds issued on the abolition of the zamindari in U.P. and the same view as in Addl. Commissioner of Income Tax, Karnataka Vs. Maharashtra Apex Corporation Ltd., was endorsed to the effect that the payment received by the Assessee in respect of these bonds represents partly capital and partly interest and Income Tax is payable only on the portion representing interest.

15. It is not in dispute that payment of annual compensation under the bonds to ex-zamindars/intermediaries would have been in the nature of capital receipt in their hands as payment of such compensation would have been in lieu of their rights in the land/estate which had been taken away by the State Government. It is also a legal fact that the Petitioner having purchased the said bonds had stepped into the shoes of the ex-zamindar/ intermediary in whose favour the bonds were originally issued. We are at a loss to understand how the nature of the compensation payable to the original holders of the bonds would change in the hands of the Petitioner who is a successor of the original bond holder and has become entitled to receive the compensation. The purchase value of the bond paid by the Petitioner has no relevance for the purposes of determining the nature of compensation so received by the Petitioner even though the same was in the nature of investment by the Assessee. The purchase of the bonds by the Petitioner at a lower price than the face value of the bonds would not be the proper test for determining the nature of compensation so received as the Petitioner not being a dealer in securities by virtue of transfer of the bonds in his favour became entitled to receive annual instalments which were payable to the original bond holders as the said right stood assigned to him.

16. In view of the aforesaid facts and circumstances, we would prefer to subscribe to the ratio laid down by the two Division Benches of the Karnataka High Court. We accordingly hold that the compensation in the form of annual instalments received by the Petitioner under the bonds is in the nature of capital receipt and is not taxable irrespective of the fact that the same happened to be in excess of the purchase value of the bonds.

17. Accordingly, we allow the writ petition and issue a writ of certiorari quashing the impugned orders dated 17-12-1982 and 2-2-1982 (annexures Nos. 8 and 6, respectively) passed by Respondent No. 3, Commissioner of Income Tax, Kanpur, and Respondent No. 2, Inspecting Assistant Commissioner of Income Tax, A Range, Kanpur, respectively.

18. The writ petition is allowed accordingly and the parties are directed to bear their own costs.