

(1980) 06 KL CK 0001

In the High Court Of Kerala

Case No : IT Reference No. 3 of 1978 & Income-tax Reference No. 3 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Dr. P. Rajendran

RESPONDENT

Date of Decision : 19-06-1980

Acts Referred:

Income Tax Act, 1961 — Section 11, 256(1)

Land Acquisition Act, 1894 — Section 18, 2(47), 20, 48

Citation : (1981) 5 TAXMAN 311

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

V. Balakrishna Eradi, C.J.—This is a reference made to this court by the Income Tax Appellate Tribunal, Cochin Bench (hereinafter called " the Tribunal ") at the instance of the revenue u/s 256(1) of the income tax Act, 1961 (for short " the Act "). The questions referred are:

(1) Whether the expenses incurred by the assessee in his litigation before the civil court to claim enhanced compensation for the compulsory acquisition of his capital asset which is the land is an expenditure incurred wholly and exclusively in connection with the transfer of such capital asset?

(2) Whether the Tribunal was, on the facts and circumstances of the case, in the departmental appeal right in allowing the assessee-respondent to make for the first time a claim for deduction of expenditure incurred wholly and exclusively in connection with the transfer of capital asset subject to the condition that in no event the quantum of capital gains after such deductions can be settled at a figure lower than what was fixed by the Appellate Assistant Commissioner?

An immovable property belonging to the assessee was acquired by the State Govt. under the Land Acquisition Act in March, 1967. Under the award of the Land Acquisition Officer, the assessee was paid compensation of Rs. 47,000. But

the assessee was not satisfied with the compensation so fixed by the Land Acquisition Officer and hence he got the matter referred to the civil court u/s 20 of the Land Acquisition Act for enhancement of the compensation. The claim put forward by the assessee before the civil court was that a sum of Rs. 2,58,233 should have been awarded to him as the market value of the property acquired. When the ITO finalised the assessment of the assessee for the assessment year 1967-68 the land acquisition reference case was pending only before the Subordinate Judge's Court, Calicut. The ITO treated the amount of Rs. 2,58,233 (which the assessee had claimed before the civil court) as the full value of the consideration for the transfer of the capital asset and on this basis he determined the capital gains that had accrued to the assessee at the figure of Rs. 2,35,233 after allowing a deduction of Rs. 23,000 by way of cost of acquisition and improvement. The assessee appealed to the AAC. The civil court had not rendered its decision in the land acquisition reference case even by the time the appeal came up for consideration before the AAC. The assessee had contended before the AAC that the claim for enhancement of the compensation made by him before the civil court should not have been adopted by the ITO as the basis for the computation of the capital gains, because until the civil court actually rendered its decision it was not possible to predict as to what extent, if any, the civil court's decision regarding the claim would be upheld. This contention did not find favour with the AAC. The AAC, however, effected a substantial reduction in regard to the market value of a building situated in the property acquired and estimated the full value of the consideration of the property at Rs. 1,19,773. He allowed only a sum of Rs. 13,000 as deduction for cost of acquisition and the further deduction of Rs. 10,000 allowed by the ITO by way of cost of improvement was disallowed by the AAC. In the result, the AAC determined the quantum of capital gains at Rs. 1,06,773.

2. The ITO appealed to the Tribunal contending that the assessment originally made by him by estimating the full value of the consideration at Rs. 2,58,233 was correct and that the same should be restored. There was no appeal or cross-appeal by the assessee. By the time the Tribunal heard the department's appeal, the final decision had been rendered in the land acquisition reference case by the High Court, before which the matter had been taken on appeal from the judgment of the Subordinate Judge's Court. Taking note of the said fact the Tribunal set aside the assessment and remanded the case to the ITO with the direction to adopt the final figure of compensation and solatium settled by the High Court decision as the full value of the consideration for the transfer of the capital asset. While doing so, the Tribunal incorporated a direction in its order that in computing the capital gains the total of the costs certified for the assessee by the sub-court and the High Court should be allowed as a deduction subject to the condition that by such deduction the capital gains should not be allowed to go below the figure fixed by the AAC, against whose decision the assessee had not filed any appeal.

3. It is contended before us by the counsel for the revenue that the Tribunal has

acted illegally in permitting the assessee to put forward before it for the first time, at the stage of second appeal, the claim for deduction in respect of the expenditure incurred in prosecuting the proceedings in the land acquisition reference case before the civil court. The counsel contends that the subject-matter of the appeal before the Tribunal was only whether the AAC was right in estimating the full value of the consideration of the property at only Rs. 1,19,773, by fixing the reduced value for the building situated on the land. We see no force at all in this contention. As pointed out by the Bombay High Court in *Pokhraj Hirachand Vs. Commissioner of Income Tax, Bombay City II*, , the subject-matter of the appeal before the Tribunal consists of the grounds of appeal raised by the appellant in his memorandum of appeal, the grounds that the Tribunal may allow him to raise and also the contentions raised by the respondent before the Tribunal in support of the order made by the AAC by challenging the adverse finding against him. The assessee in this case had contended before the AAC that the ITO had acted illegally in adopting as a basis for the computation of capital gains the amount which the assessee had claimed as compensation before the civil court. This contention had been negated by the AAC. Before the Tribunal it was perfectly open to the assessee to contend in defence, in the department's appeal praying for restoration of the estimate of the capital gains as determined by the ITO, that the basis of computation adopted by the AAC as well as by the ITO was erroneous in law. The Tribunal has, in effect, upheld that contention when it set aside the assessment on the sole ground that the proper basis to be adopted for computation of the capital gains was the final figure of compensation and solatium awarded by the High Court in the land acquisition reference proceedings. The question as to the deductibility of the expenses incurred in conducting the land acquisition reference proceedings is a matter which necessarily then arises as incidental to the adoption of the final decree awarded by the civil court as the basis for computation of capital gains. It was only when the assessee's contention that the amount of compensation awarded by the court should be adopted as the basis was upheld by the Tribunal, that the question of deductibility of the expenses properly arose. Hence, there was no illegality whatever involved in the assessee having been permitted by the Tribunal to put forward the contentions relating to the deductibility of the said item of expenditure.

4. The further question to be considered is whether the Tribunal was right in its view that the expenditure incurred by the assessee in prosecuting the land acquisition reference case before the civil court is an expenditure incurred wholly and exclusively in connection with the transfer of the land. It is strongly argued by counsel for the revenue that the said expenditure was incurred only subsequent to the transfer which should be taken as having become complete when possession of the land was taken by the State u/s 18 of the Act and title thereto became vested in the State Govt. The words "in connection with" used in clause (1) of section 48 are very wide in their ambit and hence there is no warrant for importing a restriction that to qualify for deduction the expenditure

must necessarily have been incurred prior to the passing of title. The crucial test to be applied is whether the expenditure was incurred wholly and exclusively in connection with the transfer and it is immaterial whether it was incurred prior or subsequent to the passing of title. It cannot admit of doubt that in an ordinary transaction of transfer of property inter partes the fixation of the consideration or the price is an integral part of that transaction. By virtue of the definition contained in section 2(47) of the Act the expression " transfer " will include the compulsory acquisition of a capital asset under any law. Hence, the compulsory acquisition of property under the Land Acquisition Act has to be treated as a transfer for the purposes of computation of capital gains under the Act. Under the scheme of the Kerala Land Acquisition Act, the consideration for such a transfer is to be fixed in the first instance by the Land Acquisition Officer by the award to be made by him u/s 11 of the said Act and in case the owner of the property is dissatisfied with the award the quantum of compensation is to be finally fixed by the civil court to which a reference is to be made u/s 20 of the Act. In a case where the matter is so taken to the civil court by way of reference u/s 20 of the Land Acquisition Act, the fixation of the quantum of consideration for the transfer is finally effected only by the decision rendered by the civil court. Such fixation forms an integral part of the process of transfer by way of compulsory acquisition provided by the Land Acquisition Act. The expenditure incurred by the assessee in conducting the land acquisition reference proceedings before the civil court cannot, therefore, but be regarded as expenditure wholly and exclusively incurred in connection with the transfer. Our attention has been drawn to a recent decision of a learned single judge of this court wherein an identical view has been expressed- V.A. Vasumathi Vs. Commissioner of Income Tax and Another, . We are in complete agreement with the dictum laid down in the said decision. We accordingly hold that the Tribunal was perfectly right in incorporating in its decision a direction to the ITO that while computing the capital gains on the basis of the compensation awarded to the assessee by the High Court the costs certified for the assessee by the sub-court and the High Court should be allowed as a deduction subject to the condition that by such deduction the capital gains should not go below the figure fixed by the AAC against whose order no appeal has been filed.

5. In the light of the foregoing discussion, we answer both the questions referred in the affirmative, i.e., in favour of the assessee and against the department. The parties will bear their respective costs. A copy of this judgment, under the seal of the court and the signature of the Registrar, will be forwarded to the Tribunal, as required by law.