

(2000) 05 RAJ CK 0042

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 28 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Jeevan and Sons

RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Income Tax Act, 1961 — Section 143, 148, 256

Citation : (2000) 2 WLN 362

Hon'ble Judges : N.N. Mathur, J;Amaresh Ku. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amaresh Ku. Singh, J.—Heard the learned Counsel for the applicant.

2. By this application moved u/s 256(2) of the Income Tax Act, 1961 the applicant has prayed that the Income Tax Appellate Tribunal be directed to refer following two questions to the High Court for decision:

(i) Whether on the facts and circumstances of the case the income Tax Appellate Tribunal was justified in law in holding that the amount of compensation awarded to the assessee was not chargeable to capital gains tax?

(ii) Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal was justified in law in holding that the amount of interest accrued upon the amount of compensation is not chargeable to tax?

3. The facts giving rise to the present application may be briefly stated as below:

4. The non-applicant-assessee was allotted 75 bighas of land in the year 1944 by the former Sirohi State on licence basis for establishing glass factory in Gandhi Nagar area of Abu Road. The allotment provided liberty to assessee to purchase the land at the rate of Rs. 150/- per bigha. The assessee did not avail of the liberty to purchase the land. Subsequently the land was acquired by RIICO on the consideration that the land in question belonged to the State. The assessee

claimed a right to purchase the land on the basis of the licence issued by the erstwhile Sirohi State. The assessee took the matter to the court of law. The District and Sessions Judge, Sirohi, vide his decision dated 29th August, 1990 accepted the claim of the assessee in respect of 30 bighas of land only and awarded compensation to the tune of Rs. 12,00,000/-. Since the cost at the rate of Rs. 150/- was not paid, the District and Sessions Judge, Sirohi ordered the deduction of Rs. 4500/- calculated at the rate of Rs. 150/- per bigha for 30 bighas of land. The amount of compensation awarded by the District and Session Judge, Sirohi to the assessee was to be paid after deducting the cost of the land.

5. A return of the income for the assessment year 1991-92 was filed by the Assessee on 29th March, 1993. A notice u/s 148 was sent to the assessee on 17th September, 1992 and it was served on the assessee on 20th October, 1992. The notice was for escapement of income of Rs. 12,34,547/- on account of compensation money received by the assessee on 19th March, 1991 in pursuance of the order dated 28th September, 1990 of the District and Sessions Judge, Sirohi. In response to notice u/s 143(2) of the Income Tax Act, issued on 30th May, 1994, required papers were filed on behalf of the assessee. The authorised representative of the assessee, submitted before the Income Tax Officer, Sirohi that the compensation received by the assessee was not taxable because the State Government has filed an appeal against the order passed by the District and Sessions Judge, Sirohi in the High Court and the payment has not been made to the assessee directly but it has been deposited in the Bank in the shape of F.D.R. with the direction that if the State Government wins the case in the High Court, the amount will be refunded back but the assessee has been allowed to enjoy the interest on this amount only and the compensation amount has been sanctioned on production of the bank guarantee. It was also submitted before the Income Tax Office that interest income to the tune of Rs. 1523/- has not been shown by the assessee for the assessment year 1990-91 on the total compensation of Rs. 12,00,000/- minus Rs. 4500/-. It was urged before the Income Tax Officer that the amount of compensation, which was deposited in the form of F.D.R. in the Bank in accordance with the order passed by the High Court and the interest which accrued thereon should not be held to be the income of the assessee for the assessment year 1991-92. The Income Tax Officer held that the amount of compensation to the tune of Rs. 11,95,500/- as well as the interest received by the assessee during the period 1990-91 were taxable. An appeal was preferred by the assessee before the Commissioner, Income Tax (Appeals), Udaipur. By order dated 23rd December, 1994, the appeal was dismissed. Feeling aggrieved by the orders passed by the Income Tax Officer and the Commissioner, Income Tax (Appeals), Udaipur, the assessee filed an appeal before the Income Tax Appellate Tribunal Jaipur.

6. It was contended before the Income Tax Appellate Tribunal, Jaipur that the amount of compensation payable to the assessee under the orders passed by the District and Sessions Judge, Sirohi was not taxable income because the order passed by the District and Sessions Judge, Sirohi has not become final and was

challenged by the State Government by filing an appeal in the High Court. It was also contended before the Income Tax Appellate Tribunal Jaipur on behalf of the assessee that since the principal amount of compensation deposited in the Bank, as per the order of the High Court was not taxable, the interest payable on the aforesaid amount was also not taxable.

7. The Income Tax Appellate Tribunal, by order dated 29th December, 1997 allowed the appeal. It was held by the Income Tax Appellate Tribunal that the amount of compensation as well as the interest thereon were not assessable as income for the assessment year 1991-92 because the order of the District and Sessions Judge. Sirohi, had not become final as an appeal against that order has been filed before the High Court and the amount of compensation was deposited on furnishing of bank guarantee by the assessee and the assessee was not permitted to withdraw the amount of compensation deposited by the State Government.

8. The Income Tax Appellate Tribunal, has placed reliance on the decision of the Hon"ble Supreme Court in the case of Commissioner of Income Tax v. Hindusthan Housing and Land Development Trust Ltd. 1986 161 ITR 324. In that case the Land Acquisition Officer awarded Rs. 24,97,249/- as compensation. The amount of compensation was increased to Rs. 30,10,873/- by the arbitrator the State Government preferred an appeal to the High Court. Pending the appeal the State Government deposited in the court Rs. 7,36,691/- which was the additional amount payable under the award as the respondent was permitted to withdraw that amount only on furnishing a security bond for refunding the amount in the event of appeal being allowed. The High Court-held that the entire amount of enhanced compensation was in dispute in the appeal filed by the State Government. The dispute was regarded by the court as real and substantial because the respondent was not permitted to withdraw the amount deposited by the State Government without furnishing a security bond for refunding the amount in the event of the appeal being allowed. There was no absolute right to receive the amount at that stage. If the appeal was allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. The High Court held that the additional amount of compensation under the award was not income arising or accruing to the assessee during the previous year relevant to the assessment year. When the matter was considered by the Supreme Court, the Supreme Court observed:

There is a clear distinction between cases such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles.

The order passed by the High Court was affirmed by the Hon"ble Supreme Court.

9. An application was filed by the revenue before the Income Tax Appellate

Tribunal, Jaipur, u/s 256(1) of the Income Tax Act, 1961 praying that the two questions mentioned in the application may be referred to the High Court for decision. The application was dismissed by the Income Tax Appellate Tribunal by order dated 27th May, 1998 on the ground that the decision of the Tribunal was based on the decision given by the Hon''ble Supreme Court and, therefore, no referable question arose for decision.

10. The learned Counsel for the applicant was submitted that the view taken by the Income Tax Appellate Tribunal is not correct and the amount of compensation as well as the interest which has accrued thereon are liable to be included in the income for the assessment year 1991-92. He has, therefore, requested that the Income Tax Appellate Tribunal be directed to refer above mentioned questions of law to the High Court for decision.

11. After carefully considering the facts of the case and the reasons given by the Income Tax Appellate Tribunal, we are of the opinion that the decision of the Income Tax Appellate Tribunal is based on the decision given by the Hon''ble Supreme Court in Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., There is no ground whatsoever to distinguish that case from this case. It is well established that if the decision is in accordance with the law declared by the Hon''ble Supreme Court, it cannot be said that any question of law referable to the High Court u/s 256(2) of the Income Tax Act, 1961 arises.

12. For the reasons mentioned above, we do not find any merit in this application and the same deserves to be dismissed and is hereby dismissed.