
(2000) 05 RAJ CK 0027

In the Rajasthan High Court

Case No : IT Ref. ApIn. No. 28 of 1999 12th May, 2000

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) 161 CTR 242

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

Bench : Full Bench

Advocate : Sandeep Bhandawat, for the Appellant;

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 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 Tribunal was justified in law in holding that the amount of compensation awarded to the assessee is not chargeable to capital gains tax ?

(ii) Whether, on the facts and circumstances of the case, the 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 RIM 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 29-8-1990, 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. 4,500 calculated at the rate of Rs. 150 per bigha for 30 bighas of land. The amount of compensation awarded by the District and Sessions Judge, Sirohi, to the assessee was to be paid after deducting the cost of the land.

5. A return of the income for the asst. yr, 1991-92 was filed by the assessee on 29-3-1993. A notice u/s 148 was sent to the assessee on 17-9-1992, and it was served on the assessee on 20-10-1992. The notice was for escapement of income of Rs. 12,34,547 on account of compensation money received by the assessee on 19-3-1991, in pursuance of the order dated 28-9-1990, of the District and Sessions Judge, Sirohi. In response to notice u/s 143(2) of the Income Tax Act, issued on 30-5-1994, 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 FDR 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 Officer that interest income to the tune of Rs. 15,232 has not been shown by the assessee for the assessment year 1990-91 on the total compensation of Rs. 12,00,000 minus Rs. 4,500. It was urged before the Income Tax Officer that the amount of compensation, which was deposited in the form of FDR in the bank in accordance with the orders 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 (Appeals), Udaipur. By order, dated 23-12-1994, the appeal was dismissed. Feeling aggrieved by the orders passed by the Income Tax Officer and the Commissioner (Appeals), Udaipur, the assessee filed an appeal before the Tribunal, Jaipur.

6. It was contended before the 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 considered before Tribunal, Jaipur on behalf of the assessee that since the principle amount of compensation deposited in the bank as per the orders of the High Court was not taxable, the interest payable on the aforesaid amount was also not taxable.

7. The Tribunal, by order dated 29-12-1997, allowed the appeal. It was held by the 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 Tribunal, has placed reliance on the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., . 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 and 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 Tribunal, Jaipur, u/s 256(I)

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 Tribunal by order dated 27-5-1998, 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 has submitted that the view taken by the 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 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 Tribunal, we are of the opinion that the decision of the Tribunal is based on the decision given by the Hon''ble Supreme Court in CIT v. Hindustan Housing and Land Development Trust (supra). 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.