
(1997) 09 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 20 of 1982

Commissioner of Income Tax

APPELLANT

Vs

K.C. Mahajan

RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 45, 48
Land Acquisition Act, 1894 — Section 23(2)

Citation : (1998) 234 ITR 235

Hon'ble Judges : N.K. Agrawal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; B.R. Abrol and A.C. Jain, for the Respondent

Judgement

N.K. Agrawal, J.—The following questions of law have been referred by the Income Tax Appellate Tribunal, Amritsar (for short "the Tribunal"), u/s 256(1) of the Income Tax Act, 1961 (for short "the Act") :

"(i) Question in Income Tax Reference No. 20 of 1982 (assessment year 1977-78) :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 28,810 received as solatium did not form part of the consideration for the purpose of working out the capital gain under the Income Tax Act, 1961 ?

2. If the answer to the first question is in the negative, whether the assessee is entitled to the deduction of the value of the solatium as on January 1, 1954, in computing the capital gains ?

(ii) Question in Income Tax Reference No. 75 of 1983 (assessment year 1978-79) :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was

right in law in holding that the sum of Rs. 3,353 received as solatium, did not form part of the consideration for the purpose of working Out the capital gains under the Income Tax Act, 1961 ?

2. If the answer to question No. 1 is in the negative, whether the assessee is entitled to the deduction of the value of solatium as on January 1, 1964, in computing the capital gains ?"

2. Basically, the questions in both the assessment years (1977-78 and 1978-79) are identical.

3. The assessee filed a return of income in the status of a Hindu undivided family for the assessment year 1977-78, declaring income of Rs. 18,440 and for the next assessment year, declaring income of Rs. 32,510. The assessee derived income from agriculture, house property and interest. The assessee had sold certain assets, including land measuring 77 kanals, in the previous year relevant to the assessment year 1977-78 and declared capital gains of Rs. 8,328. The Assessing Officer accepted it and, after allowing statutory exemption of Rs. 5,000 and further exemption at the rate of 25 per cent. u/s 80-T of the Act, assessed capital gains at Rs. 2,496. The assessee had also a one-third share in land measuring 232 kanals acquired by the improvement trust. The market value of the land was determined at Rs. 1,92,967 by the Acquisition Collector. Solatium at the rate of 15 per cent. amounting to Rs. 28,810, was also received by the assessee in this year. This amount was also brought to tax by the Assessing Officer under the head "capital gains" in the assessment year 1977-78.

4. In the previous year relevant to the assessment year 1978-79, the assessee had sold certain properties and, on such sales, he had declared capital gains at Rs. 11,103. This was accepted by the Assessing Officer and, after allowing statutory exemption of Rs. 5,000 and further exemption at the rate of 25 per cent. u/s 80-T of the Act, the amount of Rs. 4,578 was brought to tax under the head "Capital gains". The sum of Rs. 3,353 was further added to the assessee's income under the head "Capital gains" as the assessee had received in this year this money by way of solatium on compulsory acquisition of land.

5. The assessee challenged the inclusion of the amount of solatium received by him from the Land Acquisition Collector u/s 23(2) of the Land Acquisition Act, 1894, with the plea that solatium was awarded not as part of the market value of the land but as compensation for the injured feelings of the assessee as owner of the land. The Appellate Assistant Commissioner upheld the inclusion of the solatium in the total amount of compensation received by the assessee, in appeal for the assessment year 1977-78. However, in the next assessment year, the Appellate Assistant Commissioner, following the order of the Tribunal, took the view that the amount of solatium did not form part of the salt-price of the land.

6. The Tribunal also agreed with the assessee with regard to the plea that the amount of solatium, received u/s 23(2) of the Land Acquisition Act, did not form part of the sale consideration of the land com-pulsorily acquired by the

Government.

7. Any profit or gain, arising from the transfer of a capital asset, is chargeable to Income Tax under the head "Capital gains" u/s 45 of the Act. Such, income is subjected to tax in the year in which the transfer of the land took place. It is, therefore, necessary for the levy of tax on capital gains in relation to an asset that the concerned asset must be a "capital asset". "Capital gain" is an artificial income created by the provisions of section 45 of the Act. Capital gain or capital loss is a gain realised or loss incurred and the loss or gain must be in the disposal of an asset in any one of the modes referred to in the definition of "transfer" in section 2(47) of the Act, That primary condition must be satisfied before a tax levy on a capital gain may occur. Capital asset has been defined in section 2(14) of the Act as property of any kind held by an assessee, whether or not connected with his business or profession, but does not include the stock-in-trade, consumable stores or raw materials held for the purposes of the business or profession and also personal effects, namely, movable property, wearing apparel and furniture held by the assessee or any member of his family dependent on him. Agricultural land, not being land situate in any area comprised within the jurisdiction of a municipality or a cantonment board with a population of not less than 10,000 has also been excluded. Gold bonds and special bearer bonds issued by the Central Government are also excluded from "capital asset".

8. In order to subject any profit or gain, received by an assessee, to the charge of capital gains, it is necessary that the receipt must have originated in a transaction within the meaning of section 45 read with section 2(47) of the Act. Clause (47) of section 2 defines "transfer" in relation to a capital asset as the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein. There must be a nexus between the transfer and the profit and gain received by the assessee. In other words, the conditions precedent for attracting section 45 are that there should be a transfer of a capital asset and, as a result of such transfer, gain should have occurred or arisen to the transferor.

9. In the case of the assessee, there is no dispute about the amount of compensation received by the assessee on compulsory acquisition of his land. The dispute is only confined to the amount of solatium received at the rate of 15 per cent, of the market value of the land.

10. Section 23 of the Land Acquisition Act, 1894, reads as under :

"23. Matters to be considered in determining compensation.--(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration--first, the market value of the land at the date of the publication of the notification u/s 4, Sub-section (1) ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested .is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under, section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date, of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation-- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum, on such market value, in consideration of the compulsory nature of the acquisition."

11. It is apparent from a perusal of Sub-section (2} that a sum equivalent to 15 per cent. of the market value of the land is to be awarded in addition to the market value, in consideration of the compulsory nature of the acquisition. The word "solatium" has, however, not been used in Sub-section (2). The amount is payable at the rate of 15 per cent. on the ground that the owner of the land was required to part with his land due to the compulsory nature of the acquisition. In Sub-section (1), in addition to the market value of the land, compensation is also to be awarded for the damage sustained by the person interested in the land on account of the taking of any standing crops or trees on the land. Besides, damage sustained by the person at the time of the taking of the possession of the land as well as the damage affecting injuriously the other property of the owner, are also to be compensated. Further, compensation is also to be awarded by the Collector for the reasonable expenses incurred for the change of residence or place of business of the owner and also for the damage resulting from diminution of the profits of the land. It would be thus seen that compensation

also includes money paid by the Collector for any damage sustained by the owner of the land. In this light, Sub-section (2) cannot be read in isolation and the amount of 15 per cent., awarded under that sub-section, has to be examined whether it is an amount other than compensation to the owner of the land.

12. Shri B. R. Barolo, learned counsel for the assessee, has argued that solatium is paid to the owner as compensation for his injured feelings. It was not a right in rem or a right to the property. Since it is paid under Sub-section (2) of section 23 and not Sub-section (1), it assumes a different character and purpose. Shri Abrol has argued that under Sub-section (1), compensation is awarded not only in respect of the market value of the land but also for different kinds of damage sustained by the owner of the land. Solatium has, however, not been made payable under Sub-section (1). It cannot be treated to be a part of the consideration for the land.

13. Reliance has been placed by Shri Abrol on a decision of the Bombay High Court in *Assistant Collector v. Jamnadas Gokuldas Patel* AIR 1960 Bom 35. In that case, the validity of section 23 of the Land Acquisition Act, 1894, had been challenged on the ground that the said section was violative of article 31 of the Constitution. While examining sub-section (2) of section 23, it was observed that, for the land compulsorily acquired, the owner has to be paid, in addition to the market value, a sum equal to 15 per cent. of the market value but this right to receive the additional solatium could not be regarded as a right to property. Shri Abrol has argued that, if the solatium was not relatable to right to property, it could not be assessed to tax, treating it to be part of the compensation awarded to the owner.

14. The argument put forward by Shri Abrol does not lead us to a conclusion that the amount of solatium paid to the assessee u/s 23(2) of the Land Acquisition Act was not part of the full consideration liable to tax under the head "Capital gains". The observation made by the Bombay High Court in *Jamnadas Gokuldas Patel's* case, AIR 1960 Bom 35, was against the background of the assessee's plea that the right to property stood violated when a land was acquired compulsorily on payment of market value as on the date on which notification u/s 4 of the Land Acquisition Act was issued.

15. Shri Abrol has next placed reliance on another decision of the Bombay High Court in *Nagesh Waman Patil and Others Vs. Special Land Acquisition Officer, Bombay*, . That was a case where the Land Acquisition Officer had determined the compensation on the basis of an agreement. The market value of the land was Rs. 5.50 per square yard but the Land Acquisition Officer determined the value at Rs. 4.25 per square yard as agreed. The assessee demanded solatium also which had been denied on the ground that the agreement did not contain any clause for the payment of solatium. It was held that there was nothing in the agreement which could amount to giving up or waiving the claim of solatium. This decision of the Bombay High Court also does not help the assessee so far as the controversy before us is concerned.

16. A question regarding the assessability of income arising from the compulsory acquisition of the business was examined by the Madras High Court in *West Coast Electric Supply Corporation Ltd. and Another Vs. Commissioner of Income Tax*, . In that case, the Andhra Pradesh Government had acquired an electric supply undertaking. The compensation payable for the compulsory acquisition was provided for u/s 5 of the Andhra Pradesh Electricity Supply Undertakings (Acquisition) Act, which gave the option to the assessee to adopt one of the three methods specified therein. The assessee adopted basis A, under which compensation equal to twenty times the average annual profits of the undertaking during the period of five consecutive accounting years immediately preceding the vesting date was provided for. Under basis A, all the assets and liabilities of the undertaking became vested in the Government and the assessee was entitled to the compensation. The assessee had contended in that case that, since the entire undertaking had been taken over as a going concern, there was no transfer of capital assets. That contention was not accepted and it was held that the compulsory acquisition by the Government was transfer liable to capital gains tax u/s 12B of the Indian Income Tax Act, 1922. While examining the expression "property", reference was made to a decision of the Supreme Court in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , wherein it was observed that, in its normal connotation, "property" means the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy. It included ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts ; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to a transfer or succession, and to their capacity of being injured.

17. The Gujarat High Court has also examined a question regarding the liability to capital gains tax on the transfer of the entire business, in *Sarabhai M. Chemicals Private Ltd. Vs. P.N. Mittal* Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range-II, Ahmedabad and another, . In that case, the entire business including land, building and assets at book value and goodwill at a given value had been transferred. That was a transfer of an industrial undertaking as a going concern together with goodwill and all other assets by a holding company to its wholly-owned subsidiary at a slump price. The valuation which had been mentioned was the book value (written down value). So far as the land, buildings, plant, machinery and other assets were concerned, the competent authority issued notices u/s 269D(2) of the Act, initiating acquisition proceedings. Those proceedings were quashed by the High Court on the ground that there was no material to show that the consideration had not been truly stated in the instrument of transfer. It was seen that the question of the balancing charge u/s 41(2) of the Act did not arise because there was no sale of a particular asset of the business or a particular building, plant or machinery. The ratio of the said decision is to the effect that, even if the undertaking is

transferred as a going concern, the question of assessing the transfer under the head "Capital gains" would arise.

18. The Gujarat High Court again examined a similar question in CIT v. Artex Manufacturing Co. [1981] 227 ITR 260, Artex Manufacturing Co. Vs. Commissioner of Income Tax, Gujarat-II, . There also, a question had arisen whether any balancing charge arose u/s 41(2) of the Act on the conversion of a firm as a going concern into a company. It was seen that a private limited company had been formed to take over the business of the partnership firm as a running concern. The partners were given shares in the same proportion in which they shared the profits or losses of the firm. The firm had rented buildings and had also stores, stock-in-trade, outstanding contracts, book debts, etc., together with the liabilities. All the book debts and all the benefits of the securities were to be transferred to the company. Full benefits of the pending contracts, engagements and orders in connection with the said business and all cash in hand or in bank and bills and notes in connection with the said business were also transferred to the company. It was held that excess of assets over the liabilities, being the surplus, was assessable as capital gains. In that case, what was transferred was not the plant, machinery, building or furniture as such but the whole business of the undertaking together with its assets and liabilities and it was not sold by any itemised value or item-by-item price fixed for the different assets of the firm but the entire business of the undertaking together with assets and liabilities was sold for a slump price. Under these circumstances, it was held that the provisions of section 41(2) relating to balancing charge were not attracted but the excess money received by the assessee was assessable as capital gains. It would be thus clear from the view taken by the, Gujarat High Court that the full consideration, received by the assessee in consideration of the transfer of the capital asset, is to be determined for the purposes of capital gains tax.

19. The Kerala High Court in Commissioner of Income Tax Vs. Smt. M. Subaida Beevi, and in Karvalves Ltd. Vs. Commissioner of Income Tax, , has examined specifically the question of the assessability of solatium and has held that solatium was part of sale consideration and is to be taken into account in computing capital gains. It was held that solatium represented consideration for the property acquired.

20. The Bombay High Court has also in R.R. Todiwalla Vs. Commissioner of Income Tax, , taken the view that solatium, received in consideration of compulsory acquisition of land, was part of compensation and was assessable under the head "Capital gains".

21. This High Court had an occasion to examine a question about the additional amount of 20 per cent. paid to the assessee, in SONEPAT LIGHT, POWER AND GENERAL MILLS LTD. Vs. COMMISSIONER OF Income Tax, PUNJAB., . In that case, the assessee-company was carrying on the business of supplying electricity under a licence issued to it under the Indian Electricity Act, 1910. The Punjab

Government exercised its option under the licence to purchase the undertaking and, as per section 7(1) of the said Act and under the provisions of paragraph 9 of the licence, paid, in addition to the fair market value of the assets, 20 per cent. of such value on account of the compulsory purchase. It was held that the transfer of assets of the undertaking was a sale within the meaning of section 10(2)(vii) of the Indian Income Tax Act, 1922, and the excess up to the original cost over the written down value of the building, plant and machinery realised by the assessee was assessable to tax.

22. As has been seen, Sub-section (2) of section 23 of the Land Acquisition Act, 1894, provides for payment of a sum equal to 15 per cent. of the market value of the land in consideration of the compulsory nature of the acquisition. There is no mention that the amount, representing 15 per cent. of the market value, was in lieu of the injured feelings of the owner of the land, as argued by Shri B. R. Abrol, learned counsel for the assessee. The amount, so paid, may be called solatium but the purpose and object of such payment have not been specified, as argued by Shri Abrol. The only ground on which amount equivalent to 15 per cent. of the market value is paid, is the "compulsory nature of acquisition". Therefore, it would be difficult to accept the argument of Shri Abrol that the additional money, awarded to the land owner at the rate of 15 per cent. of the market value, was not in respect of the land acquired compulsorily but for something different like injured feelings of the owner. In the absence of any specific mention of the reason other than the compulsory nature of the acquisition, the additional payment at the rate of 15 per cent. of the market value cannot be said to be money not forming part of the consideration. As has been seen, section 45 makes the profits or the gains arising from the transfer of a capital asset chargeable to Income Tax. The additional amount, received by the owner of the land u/s 23(2) of the Act, is undoubtedly a profit arising from the transfer of land in the hands of the owner.

23. The first question in both the assessment years is, therefore, answered in the negative and to the effect that the amount of solatium, received by the assessee, formed part of the consideration for determining the capital gains. The second question in both the assessment years relates to the value of the solatium as on January 1, 1954, and January 1, 1964, respectively. The assessee's plea in the assessment year 1977-78 before the Assessing Officer was that the value of solatium as on January 1, 1954, should be deducted from the compensation while computing capital gains u/s 48 of the Act. The Assessing Officer did not allow any such deduction in either of the two years. The Appellate Assistant Commissioner accepted the assessee's plea in appeal for the assessment year 1977-78 but, in further appeal by the Revenue, the Tribunal rejected the assessee's plea and accepted the Revenue's appeal. Thus, deduction of the value of solatium as on January 1, 1954, was not allowed to the assessee.

24. In the next assessment year (1978-79), the assessee had claimed deduction of the value of solatium as on January 1, 1964. This was declined by the

Assessing Officer. Neither the Appellate Assistant Commissioner nor the Tribunal discussed this question. However, the Tribunal referred the question while deciding the application u/s 256(1) of the Act.

25. As has been seen earlier, deduction under Clause (a) of section 80T of the Act was allowed at Rs. 5,000 in each of the two assessment years, besides further deduction by way of exemption at the rate of 25 per cent. under Clause (b) of that section. It is thus clear that deductions, admissible with regard to the exemption limit, were duly allowed by the Assessing Officer u/s 80T of the Act. Further, deduction is required to be allowed u/s 48 of the Act in respect of the expenditure incurred wholly and exclusively in connection with the transfer of capital assets and also the cost of acquisition of the assets and the cost of any improvement. The assessee had claimed, u/s 48 of the Act, deduction of the value of the solatium as on January 1, 1954, and January 1, 1964, during the assessment years 1977-78 and 1978-79, respectively.

26. Solatium was awarded to the assessee at the rate of 15 per cent. of the market value on account of compulsory acquisition of the land. Therefore, there cannot be any assumption that the assessee was entitled to any solatium on January 1, 1954, or January 1, 1964. The cost of acquisition or the cost of any improvement has to be worked out under sub- Clause (ii) of Clause (a) of Sub-section (1) of section 48 of the Act. The assessee has not challenged the cost of acquisition of land and, therefore, the controversy is only confined to the value of solatium as on the date on which the cost of acquisition of the land is to be worked out. Section 48 of the Act does not permit any deduction on account of any assumed value of solatium as on January 1, 1954, or January 1, 1964. As has been seen, solatium is awarded on the basis of the market value of the land. Therefore, there is no question of determining the value of solatium as on the date on which the cost of acquisition of the land is to be determined.

27. In the result, the second question in both the assessment years (1977-78 and 1978-79) is answered in the negative and to the effect that the assessee is not entitled to any deduction of the value of solatium as on January 1, 1954, of January 1, 1964.