(1984) 09 KL CK 0009

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 64 to 67 of 1980

Commissioner of Income Tax APPELLANT

Vs

M.C. Menon RESPONDENT

Date of Decision : 19-09-1984

Acts Referred:

Citation : (1986) 157 ITR 40

Hon'ble Judges : Radhakrishna Menon, J;Kochu Thommen, J

Bench : Division Bench

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

Judgement

Radhakrishna Menon, J.—The Income Tax Appellate Tribunal, Cochin Bench., has referred the following questions, at the instance of the Commissioner of Wealth-tax, to this court for its opinion :

"(i) Whether, on the facts and circumstances of the case, Rs. 94,329 being the additional compensation awarded to the assessee in respect of his land acquired, by the judgment of the Court of Subordinate Judge, Ernakulam, rendered after March 31, 1973, could be considered as an item of asset held by him on the relevant valuation dates for the assessment years 1970-71, 1971-72, 1972-73 and 1973-74?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the right to claim additional compensation was only a right in the nature of a right to sue and hence could not be considered as an item of asset held by the assessee on the relevant valuation dates ?"

2. The only point that arises for consideration is whether or not extra compensation awarded by the civil court in a land acquisition case would constitute the value of the asset for the purpose of Section 7(1) of the Wealth-tax Act, 1957. This question is no more res integra in view of the decisions of the Supreme Court in Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and

Orissa, and Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . The Supreme Court in Pandit Lakshmi Kant Jha''s case has held as follows (p. 108):

"The right to receive compensation became vested in the assessee the moment he was divested of his estate and the same got vested in the State in pursuance of the provisions of the Bihar Land Reforms Act. As the estate of the assessee which vested in the State was known and as the formula for fixing the amount of compensation was prescribed by the statute, the amount of compensation was to all intents and purposes a matter of calculation. The fact that the necessary calculation had not been made and the amount of compensation had consequently not been quantified by the valuation date would not take compensation payable to the assessee out of the definition of assets or make it cease to be property. The right to receive compensation from the State is a valuable right, more so when it is based upon statute and the liability to pay is not denied by the State. It is no doubt true that the compensation is not payable immediately and its payment might be spread over a period of forty years, but that fact would be relevant only for the purpose of evaluating the right to compensation. It would not detract from the proposition that the right to receive compensation, even though the date of payment is deferred, is property and constitutes asset for the purpose of the Wealth-tax Act."

3. In Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , while reiterating the above proposition of law, the Supreme Court has further held as follows (p. 32):

"The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in a civil court. That is why when a claimant dies in a pending reference, his heirs are brought on record and are permitted to prosecute the reference. This, however, does not mean that the civil court''s evaluation of this right done subsequently would be its valuation as at the relevant date either under the Estate Duty Act or the Wealth-tax Act. It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of the relevant notification) as on the relevant date (being the date of death under the Estate Duty Act and valuation date under the Wealth-tax Act). u/s 36 of the Estate Duty Act, the assessing authority has to estimate the value of this property at the price which it would fetch if sold in the open market at the time of the deceased''s death. In the case of the right to receive compensation, which is property, where the Collector''s award has been made but has not been accepted or has been accepted under protest and a reference is sought or is pending in a civil court at the date of the deceased''s death, the estimated value can never be below the figure quantified by the Collector because u/s 25(1) of the Land Acquisition Act, the civil court cannot award any amount below that awarded by the Collector, the estimated value can be equal to the Collector''s award or more but can never be equal to the tall claim made by the claimant in the reference nor equal to the claim actually awarded by the civil court inasmuch as the risk of hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of this property as on the date of the deceased''s death. The assessing authority will have to estimate the value having regard to the peculiar nature of the property, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date. The first contention of the counsel for the appellant, therefore, fails."

4. The Supreme Court, while laying down the above principle, has quoted with approval the following passage from the decision of the Andhra Pradesh High Court (see Mrs. Khorshed Shapoor Chenai Vs. Assistant Controller of Estate Duty,) which was the subject matter of appeal before the Supreme Court (p. 31):

"The right to receive compensation for the lands acquired by the Government, at their market value on the date of acquisition is one and indivisible right. There is no right to ''receive compensation'' and a separate right to receive ''extra compensation''. The only right is to receive compensation for the lands acquired by the Government, which is the fair market value on the date of acquisition. The argument of the learned counsel that the right to receive extra compensation accrued when the civil court passed the order and not before, does not merit acceptance. The so-called right to receive extra compensation cannot be torn from or considered separately from the right to receive the market value of the lands acquired by the Government. The right accrues to the owner of the lands as soon as the lands are acquired by the Government. It is, therefore, difficult to accept the argument of the learned counsel for the petitioner that a fresh and an independent right to ''receive extra compensation'' accrued to the heirs of the deceased and that it was owned and possessed by the heirs of the deceased."

5. The facts of the case on hand disclose that the assessee received a sum of Rs. 94,329 as additional compensation as per decree in L.A.C. No. 140/1970, awarded by the Additional Subordinate Judge, Ernakulam.

6. It is true that the entire amount of Rs. 94,329 cannot be said to constitute the additional value of the asset for the purpose of Section 7(1) of the Wealth-tax Act. In view of the decision of the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , in assessing the value of the property, the authority concerned is bound to take into account "the peculiar nature of the property, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date". It, therefore, follows that in computing the value of the assets, the authority should deduct the expenditure the assessee had to meet to get the additional compensation.

7. Relying on the above rulings of the Supreme Court, the counsel for the Revenue submitted that the additional compensation of Rs. 94,329 awarded by the Additional Subordinate Judge also would form part of the value of the assets

at the relevant valuation dates. We are of the view that it is so. But the entire amount of Rs. 94,329 cannot be said to form part of the value of the assets for the purpose of Section 7(1) of the Wealth-tax Act in view of the decision of the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . The litigation hazards and such other incidental costs the assessee had to incur to get the additional compensation should also be deducted before arriving at the value of the assets.

8. The first question covering this aspect of the case, however, requires to be recast in view of the decision of the Supreme Court referred to above, before the same is answered. The question reframed reads as follows :

"Whether, on the facts and in the circumstances of the case, Rs. 94,329 being the additional compensation awarded to the assessee in respect of his land acquired by the judgment of the Court of Subordinate Judge, Ernakulam, rendered after March 31, 1973, in its entirety could be considered as an item of asset for the assessment years 1970-71, 1971-72, 1972-73 and 1973-74?"

9. In the light of what is stated hereinbefore, we answer this question in the negative, that is, in favour of the assessee. In view of our decision that the additional compensation awarded would form part of the asset held by the assessee on the relevant valuation dates, the second question is answered in the negative, that is, against the assessee and in favour of the Department.

10. The Tribunal is directed to dispose of the matter in the light of the observations contained in the judgment and in accordance with law.

11. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.