
(1989) 05 GAU CK 0027

In the Gauhati High Court

Case No : Income-tax Reference No. 9 of 1981

Commissioner of Income Tax

APPELLANT

Vs

O.T. Rahman

RESPONDENT

Date of Decision : 03-05-1989

Acts Referred:

Citation : (1989) 180 ITR 183

Hon'ble Judges : A. Raghuvir, C.J.;J.M. Srivastava, J

Bench : Division Bench

Advocate : D.N. Choudhury and K.H. Choudhury, for the Appellant; S.K. Senapati and B.L. Singh, for the Respondent

Judgement

A. Raghuvir, C.J.—The following two questions have been referred to this court under Sub-section (1) of Section 256 of the Income Tax Act, 1961 :

"(i) Whether, on the facts and in the circumstances of the case and having regard to the provisions of sections 5: 145(2) and 56 of the Income Tax Act, 1961, income from interest on compensation received by the assessee in the relevant previous year was not properly assessed on receipt basis in the assessment year 1973-74 ?

(ii) If the answer to question No. (i) is in the negative, whether, on the facts and in the circumstances of the case, income from interest on compensation awarded by the statutorily designated authority is not assessable only for the year in which the interest is awarded or quantified by such order of such authority ?"

2. The assessee, O.T. Rahman, owned 54 bighas 3 khathas and 17 lechas of land and that land was acquired under the Land Acquisition Act I of 1894, After the market value of the land was determined by the Land Acquisition Officer, a reference was made to the civil court and later, an appeal to the High Court was made at the instance of the landholder, the assessee. Compensation was ultimately fixed by the High Court on April 29, 1974. The question raised is with reference to the interest ordered to be paid to the landholder.

3. The Assistant District Judge, the Reference Court, ordered interest at the rate of 6% from the date of his order on April 29, 1969. As per this order, interest computed is Rs. 25,609. That interest was varied by the High Court. Interest was ordered to be paid to the landholder from the date when possession of the land was taken by the acquiring authority. As per the High Court order, interest is ascertained at Rs. 73,909.

4. The landholder, the assessee, does not maintain accounts. The Income Tax Officer held that the interest of Rs. 73,909 accrued to the assessee in the assessment year 1975-76 regardless of the circumstance or fact when the assessee received the amount of Rs. 25,609. The assessment made earlier, he stated, is to be treated as a "protective measure". The Appellate Assistant Commissioner, Shillong, ordered the assessee be taxed on accrual basis and the Income Tax Officer was directed to tax the assessee accordingly. The Tribunal, in their order, followed the decision of the Allahabad High Court in *Addl. Addl. Commissioner of Income Tax Vs. Virendra Singh*, and confirmed the order of the Appellate Assistant Commissioner. It is at the instance of the Revenue that the two questions are referred to this court for opinion.

5. Now, for two decades, like questions were hanging fire. Two views were stated in the reported case. According to the Land Acquisition Act I of 1894, land can be taken possession of even before a notification is published. There are cases where, simultaneously with the publication of the notification, due to urgency, land is taken possession of. There are also instances where possession is taken long after the publication of the notification. In all the cases, in common law, it is held that a person dispossessed is entitled to interest over and above the market value of the land from the date of taking over of possession. There are instances in statutes where no specific mention is made as to payment of interest. It is now held that acquisition is a compulsory purchase and that the landholder is entitled to interest and solatium in common law. When does the interest accrue to the landholder ? This question is burning fire in Indian courts under fiscal law for nearly two decades. To determine the question the words "accrue", "arise", "debt" and landholder's "right to receive" were all considered. Is the right of the holder, an inchoate right, or is it an ascertained right, a certain right or a predicative right ? On all aspects, views are expressed and, as of today, clear lines are drawn in two view-points to which we will immediately refer.

6. In *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax*, the Andhra Pradesh High Court held that Income Tax is not levied on a mere right to receive compensation, that there must be something tangible, something in the nature of a debt and an obligation to pay an ascertained amount, and before that no income is said to have accrued. The meaning of "accrue" in Section 4(1)(b), it was held, cannot be extended to take in amounts received in a later year, though the receipt was on the basis of a right which accrued in an earlier year. The Kerala High Court considered the issue in *M. Jairam Vs. Commissioner of Income Tax*, and reviewed the cases in *George Paul Puthuran*

Vs. Commissioner of Income Tax, and held at page 172 that the excess compensation cannot be regarded as having "accrued" or "be deemed to have accrued" on the date of dispossession of land because at that stage, it cannot be predicated that the assessee would file an application for reference in the court for excess compensation, or that the court would enhance the compensation, and even if it does so, that it would award interest on the excess compensation and, therefore, it was held that only on the day when the decree for interest is passed, it should be taken to have been received by the assessee. In the case of the Orissa High Court in Joyanarayan Panigrahi Vs. Commissioner of Income Tax, the assessee contended that the interest accrued during the assessment year alone could be taken into account and that the entire amount was not available to be considered during the assessment year merely on the basis that that amount had been paid to the assessee.

7. The Madhya Pradesh High Court in Commissioner of Income Tax Vs. His Highness Maharaja Yashwant Rao Pawar, on the issue, held at page 654, that interest accrues or arises from the time possession of the land is taken and the amount of compensation is not paid or deposited and it accrues from year to year until the amount of compensation is so paid or deposited. The person whose land is acquired has a right to receive such interest under the provisions of the law. Though the occasion for the award of interest was taking over of possession of the land acquired, the right to receive the same arose only when the court, in its discretion, awarded interest on the enhanced compensation u/s 28 of the Land Acquisition Act and it was assessable only in the year of assessment and could not be spread over the previous years because the right to receive interest did not arise prior to the passing of the decree by the court. The Allahabad High Court in Addl. Addl. Commissioner of Income Tax Vs. Virendra Singh, where the assessee did not maintain accounts, said that whether the accounts were maintained on mercantile or cash basis was irrelevant and the receipt of compensation was taxable in the year in which it accrued and not in the year of receipt. The Calcutta High Court in Commissioner of Income Tax Vs. Hindusthan Housing and Land Development Trust Ltd., held at page 392, "Interest accrues each year and is payable as such after possession is taken from the owner", and it is on that premise that the question referred to them was answered.

8. We have a reported decision of this court in N. R. SIRKER Vs. COMMISSIONER OF Income Tax, ASSAM., where the following two questions have been considered by this court (at p. 282) :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the amounts receivable by the assessee on account of transfer of contracts to third parties were revenue receipts taxable in the assessment years 1964-65, 1965-66 and 1966-67 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the amount receivable under agreements dated October 1, 1963, and September 30, 1963, accrued to the assessee on the dates of

contracts and not on the dates when the instalments became payable under the agreements ?"

9. This court held that, ordinarily, people keep accounts on the cash system, that is to say, when a certain sum is received, it is entered in his accounts and in the case of firms, etc., where a regular method of accounting is adopted, we find sometimes accounts are kept on the mercantile system. In the case in hand, the assessee did not maintain accounts. Therefore, it cannot be presumed that the assessee kept his accounts on the mercantile system. It was held that the amounts receivable under the agreements dated October 1, 1963, and September 30, 1963, accrued to the assessee on the dates of the contracts and not on the dates when the instalments became payable under the agreement. What is of importance is that nothing turns on the circumstance that accounts were not maintained.

10. We have earlier cited that the Orissa High Court considered the case of a person who did not maintain accounts. The Allahabad High Court considered the case of a person who did not maintain accounts and it was stated that nothing turns upon the fact that an assessee does not maintain accounts.

11. We hold that, in the absence of accounts, interest is to be assessed when it was received by the assessee. The questions are answered accordingly. No costs.

J.M. Srivastava, J.

12. I agree.