

(1975) 12 OHC CK 0006

In the Orissa High Court

Case No : Special Jurisdiction Case No. 130 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Raja S.N. Bhanja Deo

RESPONDENT

Date of Decision : 01-12-1975

Acts Referred:

Income Tax Act, 1961 — Section 4, 5

Orissa Estates Abolition Act, 1951 — Section 37(3)

Citation : (1977) 106 ITR 748

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : K.C. Lenka, for the Respondent

Judgement

R.N. Misra, J.—At the instance of the revenue, the Appellate Tribunal has stated a case and referred the following two questions for opinion of the court:

"(1) Whether, in the facts and circumstances of the case and in view of sections 37(3) and 38(1) of the Orissa Estates Abolition Act, 1951, interest on the amount of compensation payable to the assessee, who is an intermediary as defined in that Act, accrues year after year after the date of vesting of the estate or whether it could accrue only after the amount of compensation was quantified and ascertained under Chapter 5 of the Orissa Estates Abolition Act, 1951 ?

(2) Whether, in the facts and circumstances of the case and in the absence of accounts maintained by the assessee either in mercantile or cash system, and in view of sections 4 and 5 of the Income Tax Act, 1961, income arising to the assessee by way of interest is assessable to tax when it accrued or when it was received ?"

2. Assessee was the ex-proprietor of the erstwhile Kanika Estate which was abolished under the provisions of the Orissa Estates Abolition Act (1 of 1952). In the accounting year ending on March 31, 1965, the assessee, along with the compensation for the estate, received a sum of Rs. 26,007 by way of interest

statutorily payable on the amount of compensation. After deducting expenses of Rs. 11,060, the assessee spread over the balance amount of Rs. 14,947 in twelve years beginning with 1953-54 and ending with 1964-65 (being the years of abolition and payment) and claimed that for the assessment year 1965-66 a sum of Rs. 1,245 only out of the interest was to be taken into account for computation of his income. The Income Tax Officer found that the assessee did not maintain any account. He was of the opinion that the interest received was for the delayed payment of compensation and, therefore, was assessable in the year of receipt. Accordingly, he included the entire amount of Rs. 26,007 as taxable income of the year.

3. The Appellate Assistant Commissioner came to the conclusion that the income was taxable when it accrued only if the assessee's account was maintained on mercantile basis and since the basis of receipt was not mercantile, he upheld the inclusion of the entire money as income of the year.

4. Assessee went in second appeal to the Tribunal and reiterated his stand. Reliance was placed on a decision of the Mysore High Court in the case of Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, . On behalf of the revenue, it was contended that as the amount of compensation had not been quantified or ascertained, interest could not be deemed to have accrued earlier to ascertainment and, therefore, interest paid along with the quantified compensation must be taken to have accrued as income during the year in question. The Appellate Tribunal has come to the conclusion that the interest in respect of the compensation due has to be charged in the year in which it accrued or has become due to the assessee. Placing reliance on the provision of Section 37(3) of the Orissa Estates Abolition Act, and Sections 4 and 5 of the Income Tax Act, the Tribunal held that income that accrues or arises in a particular year becomes chargeable in that year and only when accounts are maintained on cash basis, such income may be charged in the year in which it is received. Accordingly, the Tribunal accepted the assessee's claim and gave relief.

5. The Income Tax Officer as also the Appellate Assistant Commissioner have clearly indicated in their respective orders that the assessee maintained no accounts of the receipt of interest. It has also not been indicated anywhere whether the assessee was maintaining his accounts on cash basis or according to the mercantile system. The Tribunal having nowhere found that the assessee maintained his accounts on mercantile system, the principle indicated by the Tribunal could not have brought relief to the assessee. Reliance was placed on behalf of the assessee on a decision of this court in the case of Joyanarayan Panigrahi Vs. Commissioner of Income Tax, . On facts, we find difference between the reported case and the case in hand. There is no material here at all to hold that before compensation was finalised, the quantum of interest could at all be worked out because under the statutory provision interest is a percentage of the compensation that becomes due. Therefore, as long as the compensation is not quantified, it is difficult to hold that interest was accruing on yearly basis.

On the terms of the statute, the right to interest would accrue only when the compensation gets quantified though, for purposes of working out the quantum of interest to be paid to the ex-proprietor, the rate indicated on annual basis has to be taken into account. This being the position, we are of the view that the Tribunal went wrong in holding that interest was accruing to the assessee year after year since abolition of the estate till payment of the compensation.

6. The two questions that have been referred to us are indeed one and we accordingly reframe the question thus :

"Whether, on the facts and in the circumstances of the case, the interest paid to the assessee during the year could be assessed as income of the year or the interest had to be spread over in the manner claimed by the assessee ? "

Our answer to the reframed question is :

On the facts and in the circumstances of the case, the total interest is assessable during the year of receipt, namely, assessment year 1965-66.

7. The Appellate Tribunal in paragraph 13 of its decision required the Income Tax Officer to examine the claim of expenses. That part of the direction must be sustained and the Income Tax Officer should make an enquiry as contemplated in the direction to find out whether the entire sum of Rs. 26,007 or a part thereof only has to be taken as income of the year.

8. We make no order as to costs.

Das, J.

9. I agree.