
(1986) 05 CAL CK 0032

In the Calcutta High Court

Case No : Income-tax Reference No. 344 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Sakil Ahmed

RESPONDENT

Date of Decision : 23-05-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28, 34

Citation : (1988) 172 ITR 498 : (1988) 40 TAXMAN 265

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : M.L. Bhattacharjee, for the Appellant;

Judgement

Ajit Kumar Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the question that falls for determination is whether interest paid on the additional compensation by the court u/s 28 of the Land Acquisition Act, 1894, is assessable for the relevant year in which it was awarded or was received by the assessee or such interest dates back to the date of dispossession and assessable from year to year on the basis of accrual.

2. The facts of this case are in a narrow compass.

3. A property at No. 2, Dum Dum Road, Calcutta, was acquired by the Government of West Bengal under the Land Development and Planning Act, 1948. The Government took possession of the property on December 31, 1962. The Land Acquisition Collector awarded compensation of Rs. 1,87,570. The assessee went in appeal to the Land Acquisition Judge who by his order dated July 4, 1970, increased the compensation by Rs. 98,567. He also awarded interest on the enhanced compensation from the date of acquisition to the date of payment of compensation at the rate of 6% per annum. The amount of interest up to November, 1970, was calculated to be Rs. 47,034. The Income Tax Officer took the view that the entire interest was assessable in the assessment year 1971-72. He, therefore, included the interest of Rs. 47,034 in the

assessment of the assessee.

4. On appeal, it was submitted before the Appellate Assistant Commissioner that the interest accrued to the assessee from year to year from the date of taking possession of the property by the Government up to the date of payment of the enhanced compensation and that the interest accruing in any particular year was assessable in that year. The Appellate Assistant Commissioner accepted the assessee's contention. He computed the interest receivable in the year under consideration at Rs. 3,939 and held that this amount was taxable in the year under consideration and allowed relief to the assessee of Rs. 43,095.

5. Aggrieved by the order of the Appellate Assistant Commissioner, the Department came up in appeal before the Appellate Tribunal. It was submitted before the Tribunal by the departmental representative that the right to receive interest accrued to the assessee on July 4, 1970, when the Land Acquisition Judge decreed the payment of enhanced compensation along with interest. According to him, before the date of the decree, the assessee had no right to receive any compensation and interest. He urged that the interest computed by the Income Tax Officer was rightly included in the assessment of the assessee. It was urged on behalf of the assessee that the right to receive the interest accrued to the assessee from the date of taking of -possession by the Government as it was on the date of acquisition of the property that the enhanced compensation was also to be paid. He placed reliance on the decision in the case of T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, in support of his contention. The departmental representative, on the other hand, pointed out that the assessee did not maintain any accounts on the mercantile system and the decision in T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, was not applicable to the facts of the present case.

6. The Tribunal, following the decision in the case of Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, and the decision in the case of T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, , held that interest income is to be included in the assessment of the assessee on accrual basis in the respective years from the date the Government took possession of the property to the date of payment of the enhanced compensation. The Tribunal accordingly affirmed the action of the Appellate Assistant Commissioner.

7. On the aforesaid facts, the following question of law has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the entire interest amount of Rs. 47,034 was not assessable in the assessment year 1971-72 and that only the proportionate interest referable to the assessment year 1971-72 was assessable on accrual basis in that year ?"

8. At the hearing, Mr. M.L. Bhattacharjee, learned advocate appearing for the Commissioner, has contended that there is a difference between the nature and

character of the interest awarded u/s 34 of the Land Acquisition Act, 1894, and interest awarded u/s 28 of the said Act. It is his contention that interest u/s 34 may accrue to the assessee from year to year but the interest u/s 28 which is awarded by the court is liable to be assessed only in the year when the assessee either receives such interest or the liability for payment of such interest is finally determined. A large number of decisions had been cited by Mr. Bhattacharjee. It appears that there is a divergence of judicial opinion on the question of assessability of interest on the additional , compensation awarded pursuant to the decree of the court. The High Courts of Andhra Pradesh, Gujarat, Kerala and Madhya Pradesh have taken the view that the right to additional compensation and interest thereon accrue only when such compensation and interest are finally determined by the statutorily designated authorities under the Land Acquisition Act. On the other hand, the High Courts of Mysore, Madras, Allahabad, Orissa and Delhi have taken a contrary view. It is, therefore, necessary to briefly discuss the relevant decisions to appreciate the contentions raised before us.

9. In *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax*, , the land of the assessee was acquired in July, 1954. The Collector gave his award in October, 1954. The assessee was aggrieved by the award of the Collector in respect of the compensation determined for the land acquired by the Government under the Hyderabad Land Acquisition Act. On a reference made to the District Judge, additional compensation was awarded by the court. In that case, the court was concerned with a case of additional compensation under the Land Acquisition Act but not with interest thereon. The Andhra Pradesh High Court held that when land is taken over by the Government under the Land Acquisition Act, the right of the owner to compensation is an inchoate right till the compensation is actually determined and becomes payable. When once it becomes payable, the determination of the question whether it is actually received or is deemed to have been received may depend upon the method of accounting adopted by the assessee. But before the right to receive a particular amount as income accrues, no charge can be levied under the Income Tax Act on that amount in any year anterior to the one in which it is receivable. Thus, the enhanced compensation accrued to the assessee only when the court accepted the claim, and not when the land was taken over by the Government. To hold otherwise would be entitling the Income Tax Officer to reopen, notwithstanding any limitation prescribed in the Act, an assessment and recompute the entire income on the basis of final compensation as determined by the last appellate court, which is not warranted under the Act.

10. In *Commissioner of Income Tax Vs. Smt. Sankari Manickyamma*, , the lands of the assessee were acquired by the Government under the Land Acquisition Act in the year 1933, and the compensation determined as payable by the Collector being inadequate, the matter was taken to the court and finally the proceeding ended in a compromise decree being passed on May 9, 1963, enhancing the compensation. The Andhra Pradesh High Court held that the right to receive compensation or interest accrued to the person from the date when the

statutorily designated authorities under the Land Acquisition Act determined the same. Till then, what was left with the person concerned is only a right to claim the amount, but not the right to receive the amount that may be determined by the court on the claim put forth by him. The Andhra Pradesh High Court held that the principles laid down in *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax*, are, by way of analogical extension, equally applicable to the case of interest and interest income u/s 28 of the Land Acquisition Act accrues to the assessee on the date when the compromise decree was passed on May 9, 1963, when from it was rendered payable or enforceable.

11. In *Topandas Kundanmal Vs. Commissioner of Income Tax, Gujarat*, the relevant notification u/s 4 of the Land Acquisition Act was issued on October 15, 1959. The Special Land Acquisition Officer made an award on July 18, 1962, offering an amount of Rs. 24,293 by way of compensation for acquisition of the land. The assessee, being dissatisfied with the offer made, sought a reference u/s 18 of the Land Acquisition Act. The Civil Judge, Jamnagar, enhanced the amount of compensation and directed the Government to pay interest at the rate of 4%. The assessee was thus allowed additional compensation by the Civil Judge. It may be mentioned that the State Government carried the matter in appeal to the High Court and the High Court ultimately set aside the order of the Civil Judge but in the meantime the question arose as regards the assessability of the additional compensation and interest awarded by the Civil Judge. There, the Gujarat High Court observed that the compensation awarded by the Land Acquisition Officer is nothing more than an offer to the person whose land is sought to be acquired and if that offer is not accepted, the acquisition proceedings are not concluded and the owner has the statutory right of having the question determined by the court and it is the amount of compensation which the court may determine that would bind both the owner and the Collector.

12. The right to additional compensation has to be judicially determined. There is no liability in praesenti to pay an enhanced compensation till it is judicially determined by the final court. It is on the final determination of the amount of compensation that the right to that income in the nature of compensation would arise or accrue and till then there is no liability in praesenti in respect of the additional amount of compensation claimed by the owner of the land acquired by the Government. The Gujarat High Court also considered the question of accrual of the interest. The vested and enforceable right to receive interest on enhanced or additional amount of compensation according to the Gujarat High Court, would accrue or arise only when the right to enhanced or additional amount of compensation is finally adjudicated upon by the courts.

13. In *M. Jairam Vs. Commissioner of Income Tax*, the lands of the assessee were acquired in 1962 by the State Government. The compensation was awarded by the Land Acquisition Officer. The assessee disputed the adequacy of compensation and the matter was referred to the court and by a decree dated May 29, 1969, the court awarded additional compensation with interest at the

rate of 6% from the date of dispossession. There, the court held that the income by way of interest on compensation u/s 28 of the Act cannot be regarded as having accrued or be deemed to have accrued from the moment of dispossession or of the notification u/s 4. Therefore, the right to interest on the excess compensation arose and income by way of interest accrued only when the court decreed or awarded interest while awarding excess compensation and the interest became income of the assessee only on that date and not prior to it.

14. In the case of *George Paul Puthuran Vs. Commissioner of Income Tax*, , the land was acquired in 1961. The Land Acquisition Officer awarded compensation to the assessee which was enhanced by the Subordinate District Judge on October 28, 1968. The court also decreed to the assessee interest at the rate of 6% from the date of dispossession till the date of payment. The Kerala High Court, following its earlier decision in *M. Jairam Vs. Commissioner of Income Tax*, , held that the interest on enhanced compensation could not be spread over the entire period commencing from the date of dispossession to the date of the decree passed by the court. The court was of the view that interest on the enhanced compensation decreed by the court was dependent on the discretion to be exercised by the court and that interest allowed on the enhanced compensation accrued to the assessee only on the date of the decree.

15. In *Commissioner of Income Tax Vs. His Highness Maharaja Yashwant Rao Pawar*, , the compensation was enhanced by the court by its decree dated February 7, 1970, which included interest of Rs. 43,431 for the period from April 1, 1965, to March 31, 1968, u/s 28 of the Act and the enhanced amount of compensation including interest was received by the assessee in the previous year relevant to the assessment year 1970-71. There, the Madhya Pradesh High Court observed that the amount of compensation was enhanced by the court and, secondly, the court in its discretion, directed payment of interest. Even if the court enhances the amount of compensation awarded by the Collector, it may be possible that, in a given case, the court may not award interest on the enhanced amount. Therefore, it cannot be said that the interest on the enhanced amount accrues or arises from the date when possession of the land is taken from the person whose land is acquired as the right to receive such interest accrues or arises only when the court, while enhancing the amount of compensation, also directs payment of interest thereon.

16. Thus, the Andhra Pradesh, Kerala, Gujarat and Madhya Pradesh High Courts have taken the view that the interest on enhanced compensation as decreed by the court could not be spread over and the entire interest on the enhanced compensation has to be assessed in the year in which such interest is awarded or received by the assessee.

17. Let us now turn to the decisions which have taken a contrary view. In *Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah*, , the assessee's property was acquired under the Land Acquisition Act and possession was taken on February 19, 1949. The Land Acquisition Officer's award was enhanced by the

District Judge by a decree passed on February 28, 1951, and was further enhanced by the High Court and a sum of Rs. 1,15,000 representing value of the land and Rs. 67,265 representing interest on that sum from the date on which delivery of possession was taken up to the date of payment, was paid to the assessee on October 21, 1961. The Department assessed Income Tax on the entire sum of Rs. 67,265 in the assessment year 1962-63. The Tribunal held that the interest that was payable to the assessee in each successive year accrued in that year and was liable to be assessed in that year itself and assessment of that interest cannot be postponed till the date on which the interest became ascertained or when the interest was actually paid to the assessee. On a reference, the High Court, agreeing with the Tribunal held that the Appellate Tribunal was right in holding that the entire interest amount of Rs. 87,265 was not assessable in the assessment year 1962-63, and that only the proportionate interest referable to the assessment year 1962-63, was assessable in the year. There was a complete acquisition of the right to recover the accumulated interest on the amount awarded by the Land Acquisition Officer when possession was taken, and, on the enhancement, when the appropriate decree made such enhancement, and to subsequent interest so long as it ran but was not paid. Such interest was income which accrued in the year in which it became so recoverable, within the meaning of Section 4(1)(b)(i) of the Indian Income Tax Act, 1922, The attribution of the whole of that interest to the year of receipt was manifestly wrong.

18. There the Mysore High Court observed as follows (p. 163 of 69 ITR):

"There was thus a complete acquisition of the right to recover the accumulated interest on the amount awarded by the Land Acquisition Officer when possession was taken, and on the enhancement, when the appropriate decree made such enhancement and to subsequent interest so long as it ran but was not paid. Such interest became income which accrued in the year in which it became so recoverable within the meaning of Section 4(1)(b)(i) of the Indian Income Tax Act, 1922, so long as that Act was in force, and, of Section 5(1)(b) of the Income Tax Act, 1961, when that Act commenced to operate. The attribution of the whole of that interest to the year of the receipt is manifestly impossible."

19. In Commissioner of Income Tax Vs. Dr. Sham Lal Narula, , the assessee's land was acquired by the State Government under the provisions of the Land Acquisition Act and the assessee was deprived of possession of the land on October 15, 1951. Interest, on the amount of compensation amounting to Rs. 48,660, was paid to the assessee in the previous year relevant to the assessment year 1956-57. The assessee's contention that the entire amount could not be assessed in 1956-57 did not find favour with the income tax-Officer or the Appellate Assistant Commissioner. But the Appellate Tribunal held that interest to the tune of Rs. 42,577.50, being interest due for the accounting years 1951-52 to 1954-55, accrued in the previous year ending March 31, 1955, could not be included in the assessment for 1956-57 and only Rs. 6,082.50, pertaining

to the period after April 1, 1955, could be included in the assessment for 1956-57. On a reference, the High Court held that the decision of the Tribunal was correct.

20. The Punjab and Haryana High Court held (p. 632 of 84 ITR):

"Under Section 34, the right to recover interest arises the moment the owner is deprived of his property under the Land Acquisition Act. The rate at which he is entitled to interest is also specified. The reason for this is obvious. The owner of property after his dispossession u/s 17 of the Land Acquisition Act is deprived of the income from the same. This does not happen if the possession is taken u/s 16 of the said Act. It is for this reason that Section 34 made a special provision for payment of interest from the date he is deprived of possession without payment of compensation so that the interest on such compensation, compensates him for the loss of income which could have accrued to him if the possession had been taken after making the award u/s 16 and after payment of compensation. Interest is payable only where an owner is deprived of his property and the payment of compensation is deferred. Therefore, it is obvious that the benefit which he was to acquire from the property or land was benefit accruing every year which is compensated by way of interest u/s 34."

21. In *TN.K. Govindarajulu Chetty v. CIT* [1913] 87 ITR 22, the compensation payable to the assessee by the Government for a property acquired in 1949 was ultimately fixed at Rs. 5,00,000 and the Government paid Rs. 2,54,885 in the assessment year 1955-56 and Rs. 3,73,831 in the assessment year 1956-57. The Officer took the view that the additional sum of Rs. 1,28,716 represented interest and apportioned the same for the two years. The matter came in reference before the Madras High Court. The Madras High Court held (headnote):

"the liability to pay interest would arise when the compensation amount due to the assessee had not been paid in each of the relevant years and the method of accounting of the assessee being mercantile, the accrual of interest will have to be spread over the years between the date of acquisition and the date of actual payment."

22. The Madras High Court, however, did not agree with the view of the Mysore High Court in the case of *Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah*, in so far as it proceeded to hold that the accrual alone should be taken as the basis for assessment.

23. In *Joyanarayan Panigrahi Vs. Commissioner of Income Tax*, an extent of land belonging to the assessee was acquired under two notifications and possession thereof taken on June 11, 1956. Another extent of land acquired was taken possession of on October 10, 1957. As the assessee objected to the quantum of compensation offered, the matter was decided by an arbitrator and the entire compensation for both the lands including interest of Rs. 15,519, for the first acquisition and Rs. 941 for the second acquisition was paid on January 30, 1961. For the assessment year 1961-62, the Income Tax Officer assessed

the entire amount of interest of Rs. 16,460, overruling the assessee's objection that the entire amount did not accrue during the assessment year and as such there should be no assessment of the entire amount. The assessee's appeals to the Appellate Assistant Commissioner and the Appellate Tribunal failed.

24. On a reference, the Orissa High Court held (p. 111); "the right to receive interest under the Land Acquisition Act is based on the concept that the owner of the land entitled to receive compensation is kept out of the land by being dispossessed and is not paid the compensation representing the market value of such land. Interest accrues during the intervening period between dispossession on one side and payment of compensation on the other. Thus the right to receive interest flows out of the statutory provision and at the rate of six per cent. on the total amount of compensation and such interest is payable for the period between the two events indicated above. Quantification of interest is dependent upon what the compensation ultimately turns out to be. In the instant case, the assessee was dispossessed long before the actual quantification of the compensation by the arbitrator. Thus, the right to receive interest had accrued and the competent authority representing the State of Orissa had already been in debt to the assessee in regard to the payment of interest which was yet to be quantified. The right to receive interest was not contingent but absolute. The amount thereof awaited quantification. Thus, in respect of the assessee, there was a debitum in praesenti and the solvendum was in future. In the circumstances, the right to receive interest at the rate prescribed u/s 34 of the Land Acquisition Act, 1894 (1 of 1894), was already vested in the assessee and the interest was payable though the actual disbursement could not have been made until final quantification of compensation by the arbitrator."

25. In Addl. Commissioner of Income Tax Vs. Virendra Singh, , the Bihar Government acquired lands belonging to the assessee, a retired Deputy Collector, and compensation amounting to Rs. 86,070.92 including interest of Rs. 2,506.92 up to the end of August, 1959, was paid to the assessee. As a result of further appeals, the Patna High Court by order dated September 28, 1967, determined the compensation at Rs. 3,32,632.50, in addition to the amount fixed by the Land Acquisition Officer, and on this amount interest amounting to Rs. 1,68,176 was paid to the assessee on December 16, 1967. The assessee filed returns for the years 1960-61 to 1968-69, spreading the amount of interest over these years and the Income Tax Officer upheld the spread-over and taxed the assessee on his returns. The Commissioner, on revision u/s 263 of the Income Tax Act, 1961, held that the assessee's right to receive the interest came into existence only in consequence of the decision of the High Court quantifying the amount of compensation and directing payment of interest thereon and the Income Tax Officer had no power to relate back income that, accrued or arose in a subsequent year to earlier years and set aside the assessment orders and directed the Income Tax Officer to assess the entire interest income in the year 1968-69. On appeal to the Tribunal, the Tribunal set aside the order of the Commissioner.

26. The Allahabad High Court held (p. 926 of 118 ITR):

"It is thus clear that the requirement of paying interest creates a debt. It is as if the assessee had lent the amount of compensation to the State Government and became entitled to receive interest for the time taken in its repayment. The right to interest u/s 34 accrued on the date on which the Collector took possession. It was a right in praesenti. It recurred from day to day throughout the years in between the two events, namely, dispossession and actual payment. It continued to accrue in each of the succeeding years. In the premises, only that amount of interest income could be taxed in a particular assessment year which accrued in that year."

27. In *The Commissioner of Income Tax, New Delhi Vs. Deokinandan and Sons*, , for lands belonging to the assessee-firm, which were acquired by the Government of India, the District Judge by order dated February 27, 1961, awarded additional compensation and also directed payment of interest on the enhanced compensation u/s 28 of the Land Acquisition Act, 1894. A total amount of interest of Rs. 1,10,376 was paid to the assessee in three instalments in June, 1962, December, 1962, and June, 1963. The interest up to March 31, 1961, from the date of taking possession amounted to Rs. 83,867 and the Income Tax Officer brought the entire sum of Rs. 83,867 to tax for the assessment year 1961-62, rejecting the assessee's claim that only the sum of Rs. 28,920 which accrued during the previous year relevant to that assessment year could be assessed. The Tribunal held that only interest amounting to Rs. 28,920 was assessable in the assessment year 1961-62.

28. There, the Delhi High Court, after considering the nature of interest paid u/s 28 and Section 34 of the Land Acquisition Act, held that (headnote):

"The amount of interest on enhanced compensation awarded by the court to an assessee u/s 28 of the Land Acquisition Act, 1894, is also paid for delayed payment of the compensation amount. The assessee's right to receive the interest u/s 28 accrues to him day to day throughout the years from the date of taking over of possession by the Collector till the payment of compensation. The Government is obliged to pay it: the assessee acquires a right to receive it. It is a debt owed by the Government: its liability to pay is certain although the amount is yet to be quantified."

29. Thus, the view taken by the several High Courts is that the interest awarded by the court u/s 28 of the Land Acquisition Act, will be assessable from year to year as the interest accrues from the date of dispossession. But the question is whether having regard to the nature of the proceeding under the Land Acquisition Act, it can be said that the assessment of interest shall be made on accrual basis. There is invariably a time lag between the taking of possession of the acquired land by the Collector and the payment or deposit of compensation to the owner of the land acquired. If the offer made by the Collector is not accepted, the owner of the land is entitled to have the matter decided by the civil

court. The proceedings may not end in the first court and the question of correct amount of award may ultimately be decided by the highest court of the land. It might also happen that the order or award by the civil court or the High Court might be reversed. There is, therefore, an uncertainty once the matter is taken by way of reference to the court. The application made u/s 18 of the Land Acquisition Act, is more or less in the nature of a plaint in a suit. It is in this proceeding that the right of the claimant for additional compensation has to be decided.

30. If the determination is made in the judicial proceeding on the question of additional compensation and the interest payable thereon after a lapse of several years after dispossession, the assessment under the Income Tax Act cannot be reopened for the purpose of getting back the interest or the additional compensation paid. It is difficult to appreciate how the decision in the case of *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, could be applied to a case like this as has been done by some High Courts. In the case of *Kesoram Industries*, the question was whether the liability to pay Income Tax was a liability in praesenti so that the assessee could claim it as a debt owed on the valuation of the debt. The Supreme Court held that the liability was there and at least at the end of the accounting year, the liability was crystallised although the quantification has to be made in the assessment. Accordingly, on the basis of the assessee's own accounts, the estimated tax liability on the income earned would be a debt owed on the valuation date. But, the liability to pay additional compensation or interest could not originate unless it is determined by the court ultimately and in such a case, the claimant cannot estimate the compensation which might be payable by the judgment and decree of the civil court. If the interest or additional compensation accrues to him from the date of dispossession, then the assessee has the obligation to disclose the income on the basis of the claim made by him for additional compensation and the interest payable thereon. If the right to receive the compensation and interest thereon exists from the date of dispossession, the assessee has the corresponding obligation to pay tax thereon on his own estimate. It is no doubt true that income may accrue to the assessee without actual receipt on the same. If the assessee has acquired the right to receive the income, the income accrues to him. The Supreme Court in the case of *Commissioner of Income Tax, Gujarat Vs. Ashokbhai Chimanbhai*, has held that the two words "accrue" and "arise" are used to contradistinguish the word "receive". Income is said to be received when it reaches the assessee. When the right to receive the income becomes vested in the assessee, it is said to accrue or arise. The basic concept is that he must have acquired a right to receive the income. There must be a debt owed to him by someone. Can it be said that as soon as an application is made u/s 18 for a reference on the question of award or compensation by the Collector, the assessee has a right to get additional compensation or interest thereon? From the date of dispossession, the assessee is entitled to compensation. He has got a right to receive the compensation as

well as interest therein u/s 34 of the Act. But such compensation cannot, even if it accrues to him from the date of dispossession, unless there is an adjudication thereof by the Collector and award is made, the quantum cannot be determined. The right to receive an undetermined amount of compensation cannot be said to be a right in praesenti. Where the mercantile system of accounting is followed and interest is payable on the basis of accrual and where no date is fixed for payment of interest, interest could not be said to have actually accrued on the last day of the accounting year.

31. At this stage, it is necessary to deal with the contention as regards the nature of the interest payable u/s 34 of the Land Acquisition Act and Section 28 of the said Act. u/s 34, when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6% per annum from the time of so taking possession until it shall have been so paid or deposited. The payment of interest is mandatory u/s 34.

32. Section 28 provides that if the sum which in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of 6% per annum from the date on which he took possession of the land to the date of payment of such excess into court. A view has been taken by the court as indicated earlier that it is entirely at the discretion of the court to award interest on the excess amount which the Collector ought to have awarded from the date of taking possession of the land by the Collector to the date of payment of such excess amount in court. On a combined reading of Section 28 and Section 34, it appears to us that it is obligatory on the court to award interest on the rate fund (sic) on the additional compensation awarded by the court. There cannot be any ground on which the court can refuse interest. When the court is of the opinion that the Collector ought to have awarded compensation in excess of the sum which the Collector did award as compensation, then it logically follows that the Collector ought to have deposited the excess amount on or before taking possession of the land and accordingly the claimant is entitled to interest on the entire amount of compensation. It is in effect the continuation of the proceeding originated before the Collector. If the object of Section 34 is to compensate the loss which the claimant suffered because of the deprivation of the compensation money, then such interest shall be payable on the entire amount of compensation to which the claimant is entitled upon adjudication by the court.

33. In *Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab*, the Supreme Court¹ was considering the scope of Section 34 of the Land Acquisition Act and whether the award given by the Collector was compensation for depriving the owner of the land of his right to possession of his property and, therefore, a capital receipt not liable to tax. The Supreme Court held that Section 34 itself made a distinction between the amount awarded as compensation and

the interest payable on the amount so awarded. The interest shall be paid on the amount awarded from the time the Collector takes possession until the amount is paid or deposited (at p. 154) :

"If interest on the amount of compensation determined u/s 23 is considered to be a part of the compensation or given in consideration of the compulsory nature of the acquisition, the Legislature would have provided for it in Section 23 itself. But instead, payment of interest is provided for separately u/s 34 in Part V of the Act under the heading "Payment". It is so done, because interest pertains to the domain of payment after the compensation has been ascertained. It is a consideration paid either for the use of the money or forbearance from demanding it after it has fallen due."

34. The Supreme Court further observed (p. 155):

"As the land acquired vests absolutely in the Government only after the Collector has taken possession of it, no interest therein will be outstanding in the claimant after the taking of such possession : he is divested of his title to the land and his right to possession thereof, and both of them vest thereafter in the Government. Thereafter, he will be entitled only to be paid compensation that has been or will be awarded to him. He will be entitled to compensation, though the ascertainment thereof may be postponed, from the date his title to the land and the right to possession thereof have been divested and vested in the Government. It is, as it were, that from that date, the Government withheld the compensation amount which the claimant would be entitled to under the provisions of the Act. Therefore, a statutory liability has been imposed upon the Collector to pay interest on the amount awarded from the time of his taking possession until the amount is paid or deposited. This amount is not, therefore, compensation for the land acquired or for depriving the claimant of his right to possession, but is that paid to the claimant for the use of his money by the State. In this view, there cannot be any difference in the legal position between a case where possession has been taken before and that where possession has been taken after the award, for in either case, the title vests in the Government only after the possession has been taken."

35. The Supreme Court further quoted the following observations from *Westminster Bank Ltd. v. Riches* [1947] 28 TC 159

"The general idea is that he is entitled to compensation for the deprivation. From that point of view, it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether the money was due for any other reason in law. In either case, the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute, as for instance u/s 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The

essential quality of the claim for compensation is the same, and the compensation is properly described as interest."

36. Thereafter, the Supreme Court observed (p. 156):

"This passage indicates that interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered because he had not that use. It is something in addition to the capital amount, though it arises out of it. u/s 34 of the Act when the Legislature designedly used the word "interest" in contradistinction to the amount awarded, we do not see any reason why the expression should not be given the natural meaning it bears.

The scheme of the Act and the express provisions thereof establish that the statutory interest payable u/s 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired."

37. Thus, if the interest is paid to the owner for deprivation of the use of money representing the compensation for the land acquired, in that event there cannot be any option on the part of the court not to award interest u/s 28 as the owner was deprived of the use of the money represented by the additional compensation awarded by the court. The Supreme Court also observed that as soon as the Collector has taken possession of the land either before or after the award, the title absolutely vests in the Government and thereafter the owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award, he gets compensation for both the rights. Therefore, the interest awarded u/s 28 of the Act, just like u/s 34 thereof, cannot be compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner.

38. Thus, the interest provided in Section 34 as well as in Section 28, in our view, represents the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use since the date of his dispossession.

39. The Division Bench of this court in the case of Commissioner of Income Tax Vs. Hindusthan Housing and Land Development Trust Ltd., , considered a similar contention. In that case, lands belonging to the assessee which were first requisitioned by the Government of West Bengal were acquired permanently u/s 5 of the Requisition of Land (Continuance of Powers) Act, 1947, and a sum of Rs. 24,97,249 was awarded as compensation by the Land Acquisition Collector to the assessee. The assessee preferred an appeal to the court of the arbitrator who gave an award in favour of the assessee fixing the amount of compensation at Rs. 30,10,875, thus enhancing the compensation amount by Rs. 5,13,624 on which interest was to run at 5% per annum from the date of acquisition, that is,

January 8, 1953, till the date of payment. The arbitrator also directed that further recurring compensation should be paid to the assessee. Against the order of the arbitrator, the State Government preferred an appeal to the High Court, which was pending. The State Government deposited a sum of Rs. 7,36,691 which the assessee withdrew after furnishing a security bond on May 9, 1966. The Income Tax Officer assessed the said amount as income of the assessee which had accrued to the assessee in the relevant year. The assessee's appeal to the Appellate Assistant Commissioner was dismissed. On further appeal, the Appellate Tribunal allowed the appeal and held that, as the appeal to the High Court challenging the validity of the enhanced amount was still pending and the claim of the assessee to receive the amount was sub judice and as the assessee had drawn the amount only after furnishing security, the assessee had no absolute right to receive the extra amount of compensation till the decision of the appeal to the High Court and, therefore, it could not have accrued during the relevant year. On a reference, this court considered the judgments of *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax*, *Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah*, and *Commissioner of Income Tax Vs. Dr. Sham Lal Narula*, and several other decisions.

40. This court held (p. 393):

"On a consideration of these authorities, we are of the opinion that a compensation amount can only be considered to have accrued or arisen when the said amount has become determinate and payable. The authorities which we have discussed so far, in our opinion, support us in this view. Whether the amount of compensation is determinate and payable or not will necessarily depend on the facts of each particular case. In the facts of the instant case, the Collector made an award for a particular sum. On appeal to the court of the arbitrator, the arbitrator has enhanced that amount. Against the decision of the arbitrator enhancing the amount, an appeal has been preferred and is now pending in the High Court. So far as the amount awarded by the Collector is concerned, in the first instance, the said amount is clearly determinate and, in fact, a determined amount, and is payable. There is no dispute with regard to the said amount and the said amount has already suffered tax. With regard to the enhanced amount which was subsequently fixed by the order of the arbitrator, the said amount cannot be said to be a determinate amount as the said amount is now pending appeal in the High Court. The enhanced amount may be affirmed by the High Court, may be reduced by the High Court or the entire enhanced amount may be disallowed. In the instant case, the claim for the said further amount is in jeopardy and the right of the assessee to receive any further amount is also clearly unsettled. Unless the question of payment of any enhanced compensation is decided and the amount of enhanced compensation becomes determinate and payable, the said amount cannot, in our opinion, be said to accrue or arise. The further amount awarded by the arbitrator forms in reality at this stage the subject-matter of a mere claim or an assertion on the

part of the assessee to receive the said amount, but the said claim has yet to be accepted by the court. The fact that the assessee was allowed to withdraw the said amount after furnishing the security bond, does not, in our opinion, affect the position and does not make the amount of compensation either determinate or payable. Apart from the question that actual payment is not a material consideration in the matter of compensation in a case where the accounts are maintained on the mercantile system, in the instant case the said payment received by the assessee cannot be considered to be a payment of any compensation, as the right of the assessee to receive any further compensation or the amount of the further compensation has not yet been adjudicated upon and decided. The said receipt is really the receipt of a particular sum pursuant to an order of court on the security bond executed by the assessee and on the basis of the terms and conditions mentioned in the said bond. We are, therefore, of the opinion that the Tribunal in the instant case was right in coming to the conclusion that the said extra amount of compensation amounting to Rs. 7,24,914 was not income which accrued or arose during the previous year relevant to the assessment year 1956-57."

41. This court was of the view that the amount awarded by the Collector is a determinate amount and is payable. Therefore, the amount must be determinate as well as payable but so long as the award is not passed, the amount cannot be said to be determinate although some compensation is payable. That apart, so far as the claim for enhanced compensation is concerned, it does not become determinate unless the issue is adjudicated upon and decided. The amount of such compensation does not become payable unless settled by the court and accordingly the income does not accrue or arise.

42. In our view, the legal position which emerges is that unless the actual amount of compensation has been fixed, no income can be said to accrue to an assessee. It is the amount of compensation judicially determined by the final court which accrues to him. There is no enforceable right to a particular amount of compensation and consequential interest thereon, unless the award of the Collector is finally adjudicated upon. When the Collector awards the compensation, the amount is determinate and Income Tax is leviable on that right to receive the compensation. But there is no right in praesenti to receive any enhanced compensation or interest thereon. It is, therefore, clear that when the right to receive the payment itself is in dispute, the question of payment of any tax on hypothetical interest, even if it might be paid ultimately, cannot be the subject-matter of assessment unless finality can be attached to it. It is not the question of quantification of the amount to be received. The question is whether any amount of enhanced compensation is at all payable or not. Thus, the interest on the additional amount of compensation that may be awarded by the High Court or the Supreme Court cannot accrue year to year and will be assessable in the year when finally the court determines the liability to pay such additional compensation and determines the quantum of such compensation.

43. There is one other aspect of the matter. If the accrual of income depends on the method of accounting followed by the assessee, in that event, in this case, the assessee having not maintained any accounts at all, the Income Tax Officer is entitled to proceed on the footing that the assessment should be made on the cash system of accounting. Therefore, the entire amount of interest has to be assessed as and when received and the question of relating it back to the date of dispossession or its assessment on year to year basis cannot arise.

44. For the reasons aforesaid, we are of the view that the Tribunal was not right in holding that only proportionate interest referable to the assessment year is assessable on accrual basis. The question, therefore, is answered in the negative and in favour of the Revenue.

45. There will be no order as to costs.

Dipak Kumar Sen, J.

46. I agree.