

(1981) 05 CAL CK 0020

In the Calcutta High Court

Case No : Income-tax Reference No. 478 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Santi Devi and Others

RESPONDENT

Date of Decision : 12-05-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 34

Citation : (1981) 25 CTR 42 : (1983) 139 ITR 489

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.K. Bagchi and A.N. Bhattacharya, for the Appellant;P.K. Pal and R.P. Banerjee, for the Respondent

Judgement

Sudhindra Mohan Guha, J.—In the present reference u/s 256(1) of the I.T. Act, 1961, the question posed before us is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the whole amount of interest of Rs. 86,208, received during the previous year relevant to the assessment year 1962-63, was not liable to be assessed in the assessment year 1962-63, and that only the proportionate amount which pertained to the relevant previous year should be assessed in that year ?"

2. This reference relates to the assessment year 1962-63, the corresponding accounting period of which ended on March 31, 1962. The assessee derived income from house property and also interest. The assessee owned a property situated at Behala being Plot Nos. 629, 630, 631 and 609 within the District of 24-Parganas. This property was acquired by the Land Acquisition Collector with effect from April 5, 1950, under the Land Acquisition Act. A sum of Rs. 1,33,933 was paid to the assessee towards the compensation amount. Further, a sum of Rs. 86,208 was paid on April 26, 1961, towards the interest u/s 34 of the Land Acquisition Act. Before the ITO, the assessee claimed that the whole of the interest on the compensation amount received by the assessee was not taxable

during this year as the same related to the earlier years also. The assessee's claim was not accepted by the ITO, He held that the assessee kept his accounts on cash basis and as such the full amount of interest received by the assessee during this year amounting to Rs. 86,208 was taxable in this year.

3. The assessee came up in appeal before the AAC. It was urged before him that possession of the land was taken in 1950 and the assessee was entitled to receive interest since then and as such the proportionate interest referable to each successive year was assessable in that respective year. Accordingly, only the proportionate interest referable to the assessment year 1962-63 could be assessed in this year and the entire interest which was actually paid could not be assessed in this year alone.

4. The AAC referred to the decision of the Mysore High Court in Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, , wherein it was held that the whole of the interest was not assessable in one year but only the proportionate interest referable to the assessment year under consideration was assessable in that year. He also found that there was a clear direction by the special L. A. Judge to pay the interest from the date of possession to the date of actual payment of the compensation. Thus, he was of the view that the income from interest had accrued when the assessee had possessed the right to receive the interest as well as the compensation amount from the date of possession. He also observed that, in the instant case, as no method of accounting was involved, either cash or mercantile, the question of any system cannot arise at all. Thus, he held that the ITO was not justified in treating the entire interest payment of Rs. 86,208 as income from other sources, and that only the proportionate interest referable to this year should be assessed.

5. The Department came up in appeal before the Tribunal, It was urged on behalf of the Revenue that the assessee had been following the cash system of accounting and as such the entire interest received in this year was taxable. On behalf of the assessee, it was urged that u/s 34 of the Land Acquisition Act, interest was payable on the compensation amount from the date of taking possession. Since the Land Acquisition Collector had taken possession of the land on April 5, 1950, the interest had accrued to the assessee from that date and as such the proportionate interest alone could be taxed.

6. The Tribunal found that once the possession was taken, the assessee was divested of his title and his right to possession thereof. But he was entitled to the compensation from the date of taking possession by the Land Acquisition Collector; It referred to Section 34 of the Land Acquisition Act under which the Collector shall pay the compensation amount with interest thereon at the rate of 6% per annum from the time of so taking possession until the compensation amount had been so paid or deposited. Thus, it was held that the interest had accrued to the assessee from April 5, 1950, till April 25, 1961, the date of payment. The Tribunal also held that though the interest of Rs. 86,208 was paid in this year the entire amount of interest did not relate to this year only. A part

of it related to this year and the rest related to the earlier years and the ITO could tax only the interest which had accrued in this year. In the opinion of the Tribunal, the decision in the case of Commissioner of Income Tax, Mysore Vs. V. Sampangiramaiah, completely covered the instant case. Thus, it held that the proportionate interest which had accrued in this year alone would be taxed in this year.

7. In the above facts and circumstances, it is argued by Mr. Bagchi, learned advocate for the Revenue, that the decision of the Tribunal is incorrect. According to him, the entire amount received as interest in the year under assessment was taxable. Before the right to receive the amount of interest as income accrues, no charge can be levied u/s 5(1)(b) of the I.T. Act, 1961, on that amount in any year prior to the one in which it is receivable.

8. As to the meaning of the word "arising" or "accruing", reference is made to the decision of the Supreme Court in the case of E. D. Sassoon & Co. Ltd. v. CIT [1951] 26 ITR 27 of the report, it is stated that the words "arising or accruing" are general words descriptive of a right to receive profits. At page 51 of the report, it has been observed by the Supreme Court as follows :

"It is clear, therefore, that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be, as is otherwise expressed, *debitum in praesenti, solvendum in futuro*: See *W. S. Try Ltd. v. Johnson (Inspector of Taxes)* [1946] 1 All ER 532 and *Webb v. Station and Others Garnishees* [1883] 11 QBD 518 . Unless and until, there is created in favour of the assessee, a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him."

9. Next, reference is made to another decision of the Supreme Court in the case of *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . At page 784 of the report, the Supreme Court observed as follows :

"A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in *praesenti* or in future; *debitum in praesenti, solvendum in futuro*. But a sum payable upon a contingency does not become a debt until the said contingency has happened, A liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data."

10. It is apparent that under the provisions of the I.T. Act, only the sums which accrue as income are taxable and an amount can be said to accrue as income to the assessee only when that amount was actually due to him. It was rightly pointed out by the Punjab and Haryana High Court in the case of *Commissioner of Income Tax Vs. Dr. Sham Lal Narula*, , as follows :

"In our opinion, a profit could be said to have accrued or a liability or loss could be said to have been incurred only when the profit is either actually due or the liability becomes enforceable. A mere claim to a profit or to a liability is not sufficient to make the profit to accrue or the liability to be incurred for the purposes of the Income Tax Act."

11. It is contended by Mr. Pranab Pal, learned advocate for the assessee, that the assessee being dead was substituted by his legal heirs, that u/s 34 of the Land Acquisition Act, the right to recover interest arises as soon as the owner is deprived of the property due to an acquisition by the Collector. The owner, due to such acquisition, is deprived of the income of the property. Interest is payable only when an owner is deprived of his property and the payment of compensation is deferred. According to him, the interest, therefore, accrues each year and is payable as such. The whole interest paid for the period of acquisition till payment of compensation cannot be assessed to Income Tax in the year of payment.

12. Mr. Bagchi, in support of his arguments, mainly relies upon the decision of the Andhra Pradesh High Court in the case of Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax, . It is held therein : When a land is taken over by the Government under the Land Acquisition Act, 1894, 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 I.T. Act on that amount in any year anterior to the one in which it is receivable.

13. But, in this case, there was no question of payment of any amount as interest. It is held in this case that the right to compensation under the Land Acquisition Act is an inchoate right. But such a decision has got no applicability to the question of payment of interest. Section 34 of the Land Acquisition Act does not leave the right to interest inchoate. The interest that was payable to the assessee in each successive year accrued in relation to that year and was liable to be assessed in that year. To assess the whole amount of interest in the year of payment cannot be supported.

14. Again, the decision of this court in the case of Commissioner of Income Tax Vs. Hindusthan Housing and Land Development Trust Ltd., , has got no application to the facts of this case. It is held therein at page 381 as follows :

"The compensation amount could be considered to have accrued or arisen only when the said amount has become determinate and payable. The amount awarded by the Controller in the first instance was clearly a determined amount and was payable, and the said amount had already suffered tax. With regard to the enhanced amount which was subsequently fixed by the order of the

arbitrator, the said amount could not be said to be determinate as the said amount was pending appeal in the High Court. The enhanced amount may be affirmed or reduced by the High Court, or the entire amount may be disallowed. Thus, the right of the assessee to receive any further amount is clearly unsettled. 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 claim has yet to be accepted by the court. The receipt of the sum by the assessee was 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."

15. Here also the question of assessment to Income Tax of any amount received as interest was not involved. Moreover, at page 391 of the report, it is observed by their Lordships that the interest is payable in respect of a particular year.

16. In the case of Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab, , the Supreme Court had occasion to distinguish between compensation for acquisition of land and interest paid on such compensation. In this case, it was held as follows :

"Under the scheme of the Land Acquisition Act, 1894, land acquired compulsorily vests absolutely in the Government after the Collector has taken possession of the land, whether before or after making his award determining the compensation. A statutory liability has been imposed upon the Collector to pay interest on the compensation awarded from the time of his taking possession until it is paid or deposited. This amount is not compensation for the land acquired or for depriving the claimant of his right to possession but is paid to the claimant for the use of his money by the State.

The statutory interest paid u/s 34 of the Land Acquisition Act, 1894, on the amount of compensation awarded for the period from the date the Collector has taken possession of land compulsorily acquired is interest paid for the delayed payment of the compensation and is, therefore, a revenue receipt liable to tax under the Income Tax Act."

17. Mr. Bagchi also relies on the decision of the Orissa High Court in the case of CIT v. Raja S.N. Bhanja Deo [1917] 106 ITR 748 . In this case, the assessee was an ex-proprietor of the erstwhile Kanika Estate which was abolished under the provisions of the Orissa Estates Abolition Act; In the year of assessment, the assessee, along with the compensation for the estate, received certain amount by way of statutory interest. It was held that on the terms of the statute, the right to interest would accrue only when the compensation gets quantified. It was further held that interest would not accrue to the assessee from year to year since the abolition of the estate till payment of compensation.

18. Mr. Pal draws our attention to the decision of that very Orissa High Court in the case of Joyanarayan Panigrahi Vs. Commissioner of Income Tax, , a case under the provisions of the Land Acquisition Act. The law on the point was fully

discussed at page 111 of the report. It would be of some benefit to quote that passage :

"As already indicated, 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."

19. Mr. Bagchi also placed reliance on the decision of the Bombay High Court in the case of Akola Electrical Supply Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay City-I, . This was a case in which the dispute was under the provisions of the Electricity Act. It was held therein that the moneys payable became due only when they were ascertained. The fact that interest was payable from the date of possession under the amended Section 7 of the Electricity Act did not change the position.

20. This decision also has least application to the facts of the present case, as a specific provision as to payment of interest has been made u/s 34 of the Land Acquisition Act. Moreover, in the case before the Bombay High Court, the amount was ascertained only in March, 1962, even though the possession of the undertaking together with the assets was taken in December, 1959. Since it was ascertained in March, 1962, the amount of balancing charge, as contemplated by Section 41(2) of the I.T. Act, 1961, became chargeable to tax for the assessment year 1962-63.

21. Lastly, reference has also been made to the decision of the Supreme Court in the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . It was held therein that the High Court was right in holding that there are two separate rights--one, a right to receive compensation, and the other, a right to receive extra or further

compensation. Upon the acquisition of his lands under the Land Acquisition Act, the claimant had only one right which was to receive compensation for the lands at their market value on the date of the relevant notification and it was this right which was quantified by the Collector u/s 11 and by the Civil Court u/s 26 of the Land Acquisition Act (page 31 of the report).

22. It is pointed out by Mr. Pal that the interest on the compensation for the acquisition of land accrued to the assessee each year, though not received year by year but as a lump sum in a particular year. Our attention is drawn to a passage in pages 680-681 of the decision of the Supreme Court in the case of Commissioner of Income Tax, Bombay, City II Vs. Goverdhan Ltd., , which read as follows:

"It is, however, well-established that the income may accrue to an assessee without actual receipt of the same and if the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on, on its being ascertained. The legal position is that a liability depending upon a contingency is not a debt in praesenti or in future till the contingency happens. But if it is a debt, the fact that the amount has to be ascertained does not make it any the less a debt if the liability is certain and what remains is only a quantification of the amount: debitum in praesenti, solved in future"

23. It is also argued by him that all the High Courts unanimously held that the right to recover interest u/s 34 of the Land Acquisition Act accrues as soon as the property of the assessee is acquired by the government and the interest accrues each year, and the interest for a particular year cannot be assessed to tax as a receipt in that particular year, unless the assessee follows the cash system of account. Exactly this was also the decision of the Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Dr. Sham Lal Narula, . At page 626 of the decision, it is held as follows:

"Under Section 34 of the Land Acquisition Act, the right to recover interest arises the moment the owner is deprived of his property under the Act. The rate at which he is entitled to interest is also specified. The interest on the compensation amount compensates him for the loss of income which would have accrued to him if possession had been taken after making the award u/s 16 and after payment of compensation. Therefore, 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. The interest accrues each year and is payable as such after possession is taken from the owner."

24. It should be noted that there is a distinction between the amount awarded as compensation and the interest payable on such compensation. The distinction is apparent from Section 34 of the Land Acquisition Act itself. The interest is payable for the period beginning from the date of possession on acquisition to the date of payment of compensation. The interest is not an integral part of the

compensation but it is distinct and separate. The compensation is paid for the dispossession of the rightful owner of the property on acquisition and the statutory interest is paid on the compensation awarded. Such compensation may be ascertained on a date subsequent to the date of possession of the property by the Collector from the rightful owner. The interest accrues to the assessee on the determination of the compensation to be payable to him. After such determination the interest is deemed to have accrued year after year and only the amount received as interest in the accounting year would be assessed to tax in that year and not the entire amount.

25. In the above premises, we answer the question in the affirmative and in favour of the assessee.

26. As all the High Courts are unanimous on the point, we are making the Revenue liable to pay the costs.

Sabyasachi Mukharji, J.

27. I agree.