(2000) 11 DEL CK 0056

In the Delhi High Court

Case No : Income-tax Reference No''s. 271-72 of 1975

Commissioner of Income Tax APPELLANT

Vs

Satinder Singh RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 2(1A), 256(1), 3
Punjab Resumption of Jagirs Act, 1957 — Section 2(3)

Citation : (2001) 249 ITR 183 : (2001) 118 TAXMAN 852

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Sanjiv Khanna and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the Revenue, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (in short, the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench (in short the "Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts of Rs. 1,18,996 and Rs. 5,138 received by the assessed during the accounting years relevant to the assessment years 1968-69 and 1969-70, respectively, on account of his 50 per cent, share in the jagir income are his agricultural income and Therefore exempt from tax ?"

2. The dispute relates to the assessment years 1968-69 and 1969-70. Since the dispute involved is identical, our judgment will govern each of the references.

3. The dispute relates to the question as to whether the jagir income received by the assessed was to be treated as his agricultural income and, Therefore, exempt from tax. Taking note of various disputes in which the assessed and his relatives were involved, the Tribunal concluded that the income was agricultural in nature and, Therefore, exempt from tax. Particular reference was made to two

decisions ; one of the apex court in Satinder Singh and Others Vs. Amrao Singh and Others, . and the other is in Civil Writ Petition No. 2416 of 1966, filed before the High Court of Punjab and Haryana. After noticing the rival stands, the Tribunal, inter alia, recorded the following findings :

"It is true that the assessed challenged his father''s claim that it was a military jagir in Civil Writ Petition No. 2416 of 1966. filed before the High Court of Punjab and Haryana and contended that it was not a military jagir. However, the assessed''s claim stood negatived when he entered into a compromise on March 27, 1967, with his father whereby his right to get 50 per cent, of the jagir income was recognised. The compromise was made the rule of the court by an order of the High Court of even date. As a result of this, the order of the Financial Commissioner dated October 20, 1966, holding that the jagir in question was a military jagir and as such was not liable to be resumed became final. It has to be taken Therefore as a finally settled position that the jagir under consideration is a military jagir as defined in Section 2(3) of the Punjab Resumption of Jagir Act No. 39 of 1957. This is a jagir granted long before August 4, 1914. Therefore, under the proviso to Section 3 of the said Act, it could not be resumed and was in fact never resumed. That being so, the jagir amounts, which were paid to Shri Umrao Singh and were shared half and half by him and his son (assessed) by virtue of a compromise of jagirs as wrongly assumed by the Appellate Assistant Commissioner. These amounts were jagir income which were assigned land revenue. In other words, what was paid to Shri Umrao Singh by the State Government in the case was not compensation for resumption of jagir but land revenue assigned under the implied grant from the time of the British Government. His son, who is the assessed, got 50 per cent, share from the State Government by an overriding title."

4. On being moved for reference, the Tribunal has referred the question for the opinion of this court as set out above.

5. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice. Learned counsel for the Revenue submitted that the Tribunal has failed to notice the distinctive features between military jagir and jagirs of other descriptions, According to him, military jagir is a grant for services rendered and, Therefore, conceptually different from jagirs of other descriptions.

6. We find that such a plea was not taken before the Tribunal and this question does not flow from the order of the Tribunal. On the contrary, as apparent from the conclusions of the Tribunal, it was, inter alia, held that what was paid to Shri Umrao Singh by the State Government was not compensation for resumption of jagir but land revenue assigned under the implied grant from the time of the British Government. In view of this conclusion, it was held that the assessed, who was Shri Umrao Singh''s son, got a 50 per cent, from the State Government by an overriding title.

7. In view of the aforesaid factual conclusions and, as noticed above, the absence of any conclusion about the jagir being the military jagir, the question referred is answered in the affirmative, in favor of the assessed and against the Revenue.

8. This petition stands disposed of.

