

(1984) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 74 of 1982

Commissioner of Income Tax

APPELLANT

Vs

S.C. Angre

RESPONDENT

Date of Decision : 11-04-1984

Acts Referred:

Madhya Bharat Abolition of Jagirs Act, 1951 — Section 8(2)

Citation : (1985) 47 CTR 317 : (1986) 157 ITR 261 : (1984) JLJ 483 : (1987) 33 TAXMAN 84

Hon'ble Judges : R.C. Shrivastava, J;C.P. Sen, J

Bench : Division Bench

Advocate : H.L. Sharma, for the Appellant; M.C. Jain, for the Respondent

Judgement

C.P. Sen, J.—This is a reference at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961, by the Income Tax Tribunal requiring this court to give its opinion on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest of Rs. 91,943 received by the assessee on May 29, 1970, on additional compensation accrued from year to year and should be spread over and taxed in the year to which the interest relates and only that part of interest which relates to the assessment year 1971-72 should be assessed in that year ?"

2. The facts are these : Shri C. S. Angre, the assessee, was a jagirdar of the erstwhile Gwalior State. By the Madhya Bharat Abolition of Jagirs Act, 1951, the jagirs were abolished with effect from December 4, 1952. u/s 8 of the aforesaid Act, compensation was payable to the assessee in accordance with the principles laid down in Schedule I. Under Sub-section (2) of that section, the compensation payable became due as from the date of the resumption of the jagir. Simple interest was payable at the rate of 2 1/2% Per annum from that date up to the date of payment on the amount of compensation which was payable within a period of 10 years in annual instalments. By order dated January 11, 1958, of

the Commissioner, Land Reforms & Jagirs, Gwalior, the compensation payable to the assessee was fixed at Rs. 12,03,972.36 which was payable in 10 annual instalments of Rs. 1,20,397-23 each. By a letter dated December, 1959, the Collector, District Dewas, informed the assessee that interest on the compensation amounting to Rs. 1,45,244-58 was paid on October 26, 1959. The Income Tax Officer brought to tax the interest of Rs. 24,809, Rs. 24,703, Rs. 22,621 and Rs. 14,076 for the assessment years 1956-57, 1957-58, 1958-59 and 1959-60, respectively. Similarly, for the assessment years 1960-61 and 1961-62, interest of Rs. 11,075 and Rs. 6,160, respectively, was brought to tax on accrual basis. The assessee claimed that the interest which accrued to him was a part of the compensation payable to him for the resumption of his jagirs and that it was a capital receipt not liable to tax under the Income Tax Act. The assessee's contention was, however, not accepted by the Income Tax Officer and the Appellate Assistant Commissioner but was accepted by the Tribunal and at the instance of the Commissioner of Income Tax, the M.P. High Court in the judgment reported in COMMISSIONER OF Income Tax, M. P., NAGPUR and BHANDARA Vs. SARDAR C. S. ANGRE., held that the interest was not a capital receipt. The Supreme Court in Chandroji Rao Vs. Commissioner of Income Tax, Madhya Pradesh, Nagpur, affirmed the judgment of the High Court.

3. Aggrieved by the order dated January 11, 1958, of the Commissioner, Land Reforms & Jagirs, Gwalior, the assessee filed an appeal before the Board of Revenue of the State of M.P. The grievance of the assessee was that while determining the compensation, a deduction of Rs. 30,000 should not have been made from the gross income on account of "Tanka". By order dated November 9, 1960, the Board of Revenue held that the amount of Rs. 30,000 was wrongly deducted by the Jagir Commissioner. When the matter went back to the Jagir Commissioner, he gave effect to the decision of the Board that the deduction of Rs. 30,000 from the gross income for the purpose of determining compensation money was wrong. The State of M.P. then preferred an appeal to the Board of Revenue in which the sole point raised was that the Jagir Commissioner was in error in not deducting the amount of Rs. 30,000 from the gross income for the purpose of determining the compensation payable to the assessee. A preliminary objection was raised before the Board on behalf of the respondent-assessee that the appeal was incompetent by virtue of the applicability of the principles of res judicata. The objection was overruled. The Board proceeded to observe that the Jagir Commissioner should himself have considered whether the amount of Rs. 30,000 was deductible under head VI of paragraph 4 of Schedule I, but the Commissioner had not applied his mind to that aspect of the question. The appeal was held to be maintainable. The order of the Board was expressed in these words :

"The preliminary objection of the learned counsel for the respondent is, therefore, rejected and it is held that the appeal preferred by the State against the impugned order of the Commissioner is maintainable."

4. The respondent-assessee filed a petition under Article 226 of the Constitution for issuance of a writ in the nature of certiorari for quashing the aforesaid order of the Board dated Augusts, 1963. The High Court in M. P. No. 307/63 on March 19, 1964, held that the jurisdiction of the Jagir Commissioner to deal with the case after remand was limited only to certain questions and he had no jurisdiction to decide any other question. Thus, it was not open to him to consider whether Rs. 30,000 could be deducted from the gross income for the purpose of determining the compensation money under any other head in the schedule except the head "Tanka". The High Court also held that it was no longer open to the State to urge that Rs. 30,000 was deductible on any ground other than the ground that it fell within the meaning of the word "tanka" which matter had been finally decided in favour of the jagirdar. The State of M. P. then filed an appeal to the Supreme Court and by a judgment dated January 28, 1969, in Civil Appeal No. 459 of 1966, the Supreme Court held that the High Court was right in allowing the writ petition and quashing the order of the Board of Revenue dated August 8, 1963. The ultimate result was that an additional compensation in the sum of Rs. 2,10,207 with interest amounting to Rs. 91,943 became payable to the assessee and both these amounts were received on May 29, 1970.

5. The previous year for the assessment year 1971-72 ended on December 31, 1970. Since the interest amounting to Rs. 91,943 was received in this year, the Income Tax Officer brought to tax the entire amount as the income of the assessee for this year. The assessee's submission was that the interest on compensation had been taxed from the assessment years 1956-57 to 1963-64 on accrual basis and, therefore, only that part of the interest out of Rs. 91,943, which pertained to this year, should be brought to tax. The contention was, however, not accepted by the Income Tax Officer because the Income Tax Officer was of the opinion that no regular method was being followed by the assessee in respect of the taxability of interest received on compensation. Aggrieved by this order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) did not accept the contention of the Income Tax Officer that no method of accounting had been followed by the assessee in respect of the income from interest on compensation. He observed that it was patently clear that the interest income had always been taxed on accrual basis since the assessment year 1956-57. He, therefore, held that interest was to be taxed as follows :--(i) the entire interest pertaining to the period prior to March 19, 1964, shall be taxed in the assessment year in which this date falls ; (ii) interest income pertaining to the period after March 19, 1964, shall be taxed on accrual basis in the respective assessment years. The Revenue preferred an appeal before the Income Tax Tribunal contending that the Commissioner of Income Tax (Appeals) erred in deleting the interest on additional compensation amounting to Rs. 91,943 received by the assessee during this year. By cross-objection, the assessee submitted that the Commissioner of Income Tax (Appeals) erred in not taking the interest on compensation on accrual basis for the period prior to March 19, 1964. The

Tribunal held that interest of Rs. 91,943 is liable to be spread over and taxed in the years to which this interest relates and only that part of the interest which relates to this year has to be taxed this year. The Tribunal further held that on the basis of the judgments relied on behalf of the Revenue, it cannot be held that interest income is to be taxed only on the basis of receipt. So both the appeal and the cross-objection were partly allowed. Then an application was moved by the Commissioner of Income Tax for a reference u/s 256(1) for referring two questions to this court, but the Tribunal has referred the aforesaid question only for opinion of this court.

6. The interest paid to the assessee in this case is statutory interest u/s 8(2) of the Madhya Bharat Abolition of Jagirs Act, 1951. The position regarding the taxability of the interest, whether received originally along with the original compensation or later on when the compensation was enhanced, will be the same. In other words, since interest received by the assessee is statutory interest, the interest is required to be taxed from year to year. We are fortified in our view by the following decisions in Commissioner of Income Tax Vs. Dr. Sham Lal Narula, , Joyanarayan Panigrahi Vs. Commissioner of Income Tax, , Addl. Commissioner of Income Tax Vs. Virendra Singh, and Commissioner of Income Tax Vs. His Highness Maharaja Yashwant Rao Pawar, . In these cases, the question was whether the interest payable u/s 34 of the Land Acquisition Act, 1894, was to be taxed on accrual basis or on the basis of receipt and it was held that the right of claim being statutory, it accrues from year to year and has to be assessed as such. The learned counsel for the Revenue relied on some decisions which are clearly distinguishable. Those are cases u/s 28 of the Land Acquisition Act wherein interest was awarded by the court on the additional compensation determined and it has been held that interest on enhanced compensation accrued to the assessee only when the award is given by the court and the interest on enhanced compensation is in the discretion of the court and is not a statutory right. So it has to be assessed on the basis of receipt. Those cases are Commissioner of Income Tax Vs. Smt. Sankari Manickamma, , M. Jairam Vs. Commissioner of Income Tax, , George Paul Puthuran Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. His Highness Maharaja Yashwant Rao Pawar, . Though this was a case of interest paid u/s 28 of the Land Acquisition Act, yet this court observed that interest payable u/s 34 of the Act accrues or arises from the time possession of the land is taken 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 interest. The decision in Commissioner of Income Tax Vs. Raja S.N. Bhanja Deo, is clearly distinguishable, wherein it has been held that as long as compensation was unquantified under the Orissa Estates Abolition Act, 1952, it was difficult to hold that interest was accruing on yearly basis and so interest was assessable during the year of receipt. The High Court did not consider that earlier the interest has already been taxed on accrual basis and once the method of accounting is accepted by the Revenue, it cannot be changed unilaterally as has been held in Rattan Chand

Dhawan Vs. Commissioner of Income Tax,

7. Accordingly, we answer the reference in the affirmative, in favour of the assessee and against the Department. Under the circumstances, there shall be no order as to costs.