
(1980) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Income Tax Reference No. 30 of 1971

Commissioner of Income Tax

APPELLANT

Vs

Sri Ram Gopal

RESPONDENT

Date of Decision : 09-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 5

Jaipur Land Acquisition Act, 1943 — Section 34, 4

Citation : (1980) 16 CTR 349 : (1980) 123 ITR 388 : (1980) RLW 575

Hon'ble Judges : C.M. Lodha, C.J.; N.M. Kasliwal, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; None, for the Respondent

Judgement

C.M. Lodha, C.J.—This is a reference by the Income Tax Appellate Tribunal, Delhi Bench " C", u/s 256(1) of the I.T. Act, 1961 (which will hereinafter be referred to as " the Act"). The question referred to us reads as follows:

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 99,394 was not includible in the income of the assessee for the assessment year 1962-63 ? "

2. The assessment year under consideration is 1962-63 (ending on March 31, 1962). The assessee owned certain lands with structures thereon measuring 17,315 sq. yards at Jaipur. This land was acquired by the former State of Jaipur in two instalments. One piece of land was acquired u/s 4 of the Jaipur Land Acquisition Act, 1943, by a notification dated August 13, 1943, and possession thereof was taken by the Government on July 23, 1945. The Land Acquisition Officer gave a cash award of Rs. 29,014-8-0 on February 5, 1944, and also recommended to the Government that another plot of land may be granted to the assessee in exchange for the land acquired over and above the cash compensation. The cash compensation of Rs. 29,014-8-0 was paid to the assessee on July 22, 1945, but no alternative piece of land in exchange as recommended by the Land Acquisition Officer was given to the assessee.

3. Another piece of land belonging to the assessee measuring 13,468 sq. yards was acquired by notification dated June 6, 1945, and possession of the same was taken over by the Government in July, 1948. By an award dated August 3, 1946, the Land Acquisition Officer, Jaipur, directed that cash compensation to the tune of Rs. 22,077 may be paid to the assessee and another plot of land may also be given in exchange over and above the cash compensation. However, as it transpired, no land ordered to be given in exchange for the land acquired over and above the cash compensation was given to the assessee. Even the amount of compensation under the second award dated August 3, 1946, was not paid to the assessee with the result that the assessee was driven to file a civil suit for the recovery of Rs. 22,077 with interest. The civil suit resulted in a decree for Rs. 31,275 in favour of the assessee and it appears that the decretal amount including interest was paid to the assessee in two instalments in December, 1959, and in November, 1960, respectively.

4. Since no land had been granted to the assessee in exchange as adjudged by the Land Acquisition Officer under the aforesaid two awards, the assessee submitted a claim for cash compensation to the tune of Rs. 5,15,685 besides interest thereon, on October 31, 1960, and the Land Acquisition Officer by his award dated December 30, 1961, fixed cash compensation at Rs. 1,73,177. With regard to payment of interest the Land Acquisition Officer ordered as follows :

" Interest at the rate of 4% per annum is also payable on the above amount of compensation from the date of taking possession over the land till the date of payment of compensation u/s 34 of the Rajasthan Land Acquisition Act, 1953. The amount of interest, however, can be determined only after payment of the amount of compensation."

5. The total amount of interest at the rate of 4% per annum for the period commencing from the date of taking over possession of the two plots of land in question and the date of award, i.e., December 30, 1961, came to be Rs. 1,04,569 and a sum of Rs. 1,752 also became due to the assessee from December 31, 1961, to March 31, 1962. The total amount of interest thus worked out to Rs. 1,06,321. The ITO brought to tax the whole of this amount of interest during the relevant assessment year by his order dated December 5, 1966 (Annex. " A "). Aggrieved by the order of the ITO, the assessee filed an appeal before the AAC, who held that out of Rs. 1,06,321, only Rs. 6,927 accrued to the assessee during the relevant assessment year and in this view of the matter, he deleted an amount of Rs. 99,394 from the total income of the assessee for the year under consideration.

6. Dissatisfied with the order of the AAC, the revenue filed an appeal before the Tribunal, which upheld the order of the AAC holding that the award was given under the Land Acquisition Act and under the charging Section 5 of the I.T. Act, 1961, interest of only Rs. 6,927 can be said to have accrued to the assessee during the accounting year relevant to the assessment year 1962-63. Copies of the orders of the AAC and the Tribunal dated September 27, 1969, and June

20,1970, marked annexs. "B" and " C ", respectively, have also been submitted to us along with the reference. The view of the Tribunal having gone against the revenue, an application for reference was made by the Commissioner before the Tribunal requiring the Tribunal to state a case and refer the question of law arising out of its appellate order to this court. The Tribunal allowed the application, and this is how the reference has come up before this court.

7. We have heard Mr. S. M. Mehta, learned counsel for the Commissioner at some length but have had no benefit of hearing the assessee, as he has not put in appearance in spite of service.

8. There is no denying the fact that the award in pursuance of which interest has been allowed to the assessee on the amount of compensation for the land acquired from the assessee was made during the relevant assessment year, i.e., December 30, 1961. The contention on behalf of the revenue is that the right to receive the interest became vested in the assessee only on December 30, 1961, and not when the possession of the land was taken, i.e., July 23, 1945, under the first award and July 15, 1948, under the second award.

9. Section 5(1)(b) of the Act provides as follows:

"5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which--.....

(b) accrues or arises or is deemed to accrue or arise to him in India during such year."

10. It is settled law that if the income has accrued during any particular year, it is not open to the assessee or the ITO to take that income into consideration in any other year.

11. In *Laxmipat Singhania Vs. Commissioner of Income Tax, U.P.*, the Supreme Court observed as follows :

" it is not open to the Income Tax Officer, if income has accrued to the assessee, and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as income of another year on the basis of receipt."

12. It is, therefore, necessary to determine how much income by way of interest accrued to the assessee during the assessment year 1962-63; the entire amount or a part of it. In other words, the main point for determination is as to when the interest accrued to the assessee. If it is found that the whole interest accrued during the previous year relevant to the assessment year in question, the assessee would undoubtedly be liable for tax in respect of the entire amount. If, however, the conclusion is reached that during some of the previous years a part of the total amount of interest had accrued, then only such part of the total amount of interest, which accrued to the assessee during the assessment year

1962-63, could be brought into the net of taxation.

13. In *E.D. Sassoon and Company Ltd. Vs. The Commissioner of Income Tax, Bombay City*, the Supreme Court observed 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*..... 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. "

14. Again in *Commissioner of Income Tax, Bombay, City II Vs. Goverdhan Ltd.*, their Lordships observed :

" 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 *futuro* 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*, *solvendum in futuro*. "

15. Lastly, we may refer to *The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu*, wherein the Supreme Court reiterated the same view and held that an income accrues or arises when the assessee acquires a right to receive the same. The question as to when does a right to receive an amount accrue or arise to the assessee, i.e., come into existence, depends upon the facts and circumstances of each case. The position boils down to this that if the ITO comes to the conclusion that such a right accrued or arose to the assessee in a particular accounting year, he shall include the said income in the assessment of the succeeding assessment year, but no power is conferred on the ITO under the Act to relate back an income that accrued or arose in a subsequent year to another year on the ground that the said income arose out of an earlier transaction. The *sine qua non* of liability, therefore, in the present case is a determination as to when the income by way of interest accrued to the assessee. In the case of *Commissioner of Income Tax, Gujarat Vs. Ashokbhai Chimanbhai*, their Lordships observed that when the right to receive the income becomes vested in the assessee it is said to accrue or arise". In other words, we have to determine in the present case, when the right of the assessee to receive interest became vested in him.

16. Mr. Sagarmal has been at pains to argue that the right to receive interest

vested in the assessee only when the award for payment of interest was given on December 30, 1961. His contention is that at the time when the original awards were given or when the possession of the land in question was taken over from the assessee, no award of interest was contemplated, inasmuch as only land in exchange was ordered to be given for the land acquired, over and above the cash compensation. He has submitted that there could not have been two awards in respect of acquisition of the same land and in that view of the matter he has urged that previous awards having been given on February 4, 1944, and August 3, 1946, the subsequent award dated December 30, 1961, under the Land Acquisition Act was just an executive order, by which a right to receive cash compensation and interest thereon was vested in the assessee.

17. We are, however, unable to accept this contention. The right of the assessee to get compensation on account of acquisition of his land accrued to him at the time when the possession of the land was taken from him. It is clear from Section 34 of the Jaipur Land Acquisition Act (No. 28 of 1943) that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Nazim 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. Therefore, compensation for the land acquired as also interest thereon became payable to the assessee when possession of the land was taken from him. Payability is not dependent upon quantification, though there may be no payment until quantification is final. It cannot be gainsaid that the total interest of Rs. 1,06,321 awarded to the assessee related to the accounting years commencing from the years during which possession of the lands was taken over from the assessee, and so also interest must be deemed to have accrued to the assessee in each of the years subsequent to taking over possession of the land from him. The Land Acquisition Officer instead of allowing full compensation in cash granted partly cash compensation and also certain land in exchange for the land acquired, over and above the cash compensation. However, the grant of land in exchange did not materialise and no land whatsoever was given to the assessee in exchange, with the result that the assessee moved the Land Acquisition Officer for grant of cash compensation in lieu of the land which had not been given to him in exchange. In such circumstances, the amount of cash compensation determined in 1961, along with interest must be taken to relate back to the time when the original awards were given and possession of the land taken from the assessee. In the peculiar circumstances of the case, it would, therefore, be reasonable to introduce a legal fiction and hold that the award given on December 30, 1961, should be deemed to be a part and parcel of the original awards of 1945 and 1946, respectively. In this, view of the matter, the amount of interest awarded to the assessee on December 30, 1961, should be deemed to have accrued during the years 1945 and 1946 and subsequent accounting years for the purpose of assessment under the Act in the respective years. On the said basis, the AAC as well as the Tribunal were correct in treating Rs. 6,927 only as interest accrued to the assessee during

the year under reference and thus the balance of the amount of interest to the tune of Rs. 99,394 was rightly deleted by the Tribunal from the total income of the assessee during the accounting year relevant to the assessment year.

18. The result of the foregoing discussion is that we answer the reference in the affirmative in favour of the assessee. There will be no order as to costs.