
(1996) 02 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 468 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Subodh Kumar Jain

RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 45

Citation : (1996) 136 CTR 184 : (1996) 221 ITR 802

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : A. Adhikari, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

1. This is an Income Tax reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue. The following, questions of law have been referred by the Tribunal for answer by this court :

"(1) Whether the transfer of property within the meaning of Section 45 of the Income Tax. Act, 1961, takes place in consequence of acquisition proceedings u/s 17(1) of the Land Acquisition Act, 1894, on the basis of notification, i.e., October 19, 1973, and published during the period February 13, 1974, to February 18, 1974, or the date of order of the Land Acquisition Officer passed on August 5, 1974 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the capital gains arising from the compulsory acquisition of the property arose in the previous year corresponding to the assessment year 1975-76 and became taxable in that assessment year ?"

2. The brief facts giving rise to this reference are that the assessee was the owner of a Bungalow No. 427, South Civil Lines, Jabalpur, along with land appurtenant thereto. This property was acquired u/s 17(1) of the Land Acquisition Act, 1894. The proposals to acquire the property was notified in the M.P. Official Gazette, Part I, dated October 19, 1973. The notification for

acquisition of the property was published during the period February 13, 1974, to February 18, 1974. The final date of hearing was also fixed on March 12, 1974, on which date in the absence of any adverse claim, the property was alleged to have been acquired.

3. The Land Acquisition Officer made the order on August 5, 1974, awarding a compensation of Rs. 2,13,400. An additional compensation of Rs. 3,08,461 was also awarded by the court on May 3, 1980. The possession of the land in question was handed over to the Sanchalak, Telecom Training Centre, Jabalpur, on January 4, 1975. The assessee offered the income assessable under the head "Capital gains" in regard to the property in the return filed for 1976-77. The said return was subsequently revised on September 1, 1976. The assessee also claimed before the Income Tax Officer that the capital gains on the acquisition of the property would fall to be considered only in the year 1975-76 as the assessee had received compensation award from the Land Acquisition Officer on August 5, 1974, which date fell in the financial year 1974-75.

4. The Income Tax Officer did not accept the assessee's above plea and assessed the compensation in 1976-77. His findings were reversed by the Commissioner of Income Tax (Appeals), who observed that the capital gains arising out of the compulsory acquisition of the property would not fall to be considered in the assessment year 1976-77. The Income Tax Officer, thereafter initiated action u/s 148 of the Act for the assessment years 1974-75 and 1975-76. For the assessment year 1975-76, he did so because the Commissioner of Income Tax (Appeals) in his appellate order had observed that it would be open to the Income Tax Officer to take appropriate action for the assessment year 1975-76 if he were of the opinion that the capital gains was taxable in the assessment year 1975-76. This was probably construed by him as a direction given by the Commissioner of Income Tax (Appeals).

5. For the assessment year 1974-75, the Income Tax Officer reopened the assessment, taking the view that the property vested in the Government on the date of notification which in this case was March 12, 1974. The Income Tax Officer completed the assessment for this year, including in the total income, inter alia, a sum of Rs. 2,64,087 which was the capital gains determined by him on the transfer of the property. When the matter was carried in appeal, this action of the Income Tax Officer was confirmed by the Commissioner of Income Tax (Appeals).

6. The Tribunal took the view that the material date is the date on which the property vested in the Government absolutely and that, according to the Tribunal, was January 4, 1975, which fell in the previous year relevant to the assessment year 1975-76. The Tribunal was of the view that the capital gains exigible to tax could not be brought to tax in the assessment year 1974-75. Hence, the Tribunal has referred the aforesaid questions of law for answer by this court.

7. We have considered the matter and we are of the opinion that in the present case the actual possession was taken over on January 4, 1975. If this be the crucial date, then automatically the assessment order for the capital gain shall be 1975-76 and the previous assessment year relevant will be 1974-75. This is so because the actual date of taking over possession has been brought in evidence. According to Section 17(1) also, the Government can take possession of the land prior to the passing of the award. Therefore, the crucial question is taking over the possession of the land. In the instant case, it is January 4, 1975. Therefore, we are of the opinion that the Tribunal has rightly proceeded in the matter.

8. Hence, question No. 1 is answered in favour of the assessee and against the Revenue. Question No. 2 is also answered in favour of the assessee and against the Revenue.