(1983) 08 MAD CK 0054

In the Madras High Court

Case No : Tax Case No''s. 411 to 416 and 470 to 475 of 1978 (Reference No''s. 231 to 236 and 290 and 295 of 1978)

Commissioner of Wealth-tax APPELLANT

Vs

A.R. Krishnamurthy and Another RESPONDENT

Date of Decision : 30-08-1983

Acts Referred:

Citation : (1985) 153 ITR 408

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; A.S. Chandrasekaran, for the Respondent

Judgement

Ramanujam, J.—In all these cases, at the instance of the Revenue, common question has been referred to this court for its opinion and the question is as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional compensation amount was not liable to be included in the net wealth of the assessee for the assessment year 1970-71 to 1975-76 ?"

2. Taking up first. T. Cs. Nos. 470 to 475 of 1978, the assessee is HUF representing two branches. The family owned some lands in Koyambedu village in Saidapet taluk, Chengalpattu district. The said lands were acquired by the Government for the West Madras Neighbourhood Scheme sponsored by the State Housing Board. The Land Acquisition Officer awarded a compensation of Rs. 2,53,939. The assessee moved the Sub-court, Chengalpattu, for higher compensation by seeking a reference under s. 18 of the Land Acquisition Act. The sub-court enhanced the compensation by Rs. 26,898. This enhanced compensation was received by the assessee''s family partly in July, 1974, and partly in September, 1974. Not satisfied with the enhanced compensation given by the Sub-court, Chengalpattu, the assessee went up in appeal to the High

Court. The High Court, by its judgment dated April 8, 1974, awarded further compensation of Rs. 3,93,338 in addition to the compensation awarded by the sub-court. Aggrieved by the award made by the High Court, the State Government has filed an appeal before the Supreme Court questioning the enhancement of compensation by the High Court, and the said appeal is pending disposal before the Supreme Court. Pending the appeal, the Government had deposited the entire enhanced compensation awarded by the High Court and the assessee had been permitted by the Supreme Court to withdraw the extra compensation amount on furnishing a bank guarantee and the assessee drew the amount and had deposited the same in the Indian Bank in fixed deposit on April 15, 1975.

3. For the assessment years 1970-71 and 1971-72, the WTO had earlier taken the compensation awarded by the Land Acquisition Officer as the market value of the lands acquired on the relevant date. Subsequently, the said assessment were reopened by the WTO so as to bring to tax the extra compensation awarded by the sub-court as well as the High Court aggregating to Rs. 4,20,236. For the remaining years, i.e., 1972-73, 1973-74, 1974-75 and 1975-76, the WTO added the above compensation amount of Rs. 4,20,236 to the compensation fixed by the Land Acquisition Officer and the aggregated amount was taken as the value of the lands acquired on the relevant valuation dates.

4. The assessee filed appeals the AAC contending that the excess compensation awarded either by the sub-court on reference under s. 18 or by the High Court on appeal, cannot be taken to be an asset in terms of the W.T. Act, and as such the additional compensation awarded cannot be taken into account while determining the market value of the right to receive compensation arising out of acquisition and as the right to receive compensation could be eventually valued only after the decision of the Supreme Court, it is not open to the WTO to add the additional compensation awarded by the civil courts. It was also contended that a mere claim for higher compensation did not constitute a right to receive it and, in any event, the right to receive higher compensations has no value, for the right to receive higher compensation, if sold in the open market, may not fetch any amount since that right is sometimes illusory and is fraught with many vicissitudes of prolonged litigation. The AAC, however, rejected the assessee''s contention holding that though the compensation amount is not finally determined until the decision is rendered by the Supreme Court authorities can value the right as now evaluated by the courts and that if and when the quantum is varied by the Supreme Court, it will be open to the WTO to adopt the final figure and to proceed to amend suitably the wealth-tax assessments of the assessee in accordance with the decision of the Supreme Court.

5. The assessee then took the matter in appeal to the Tribunal. Before the Tribunal, the assessee contended that only the sum of Rs. 2,53,939 which was originally fixed as compensation by the Land Acquisition Officer can be included in the value, that after payment of the said sum as compensation by the Land

Acquisition Officer, the assessee had only a right to claim enhanced compensation and such a right is inchoate and it is only a right to sue and such a right has no market value at all. According to the assessee, even though the sub-court as well as the High Court and awarded excess compensation amount, that should be ignored and cannot be added to the rum of Rs, 2,53,939 which was originally fixed as compensation by the Land Acquisition Officer. On behalf of the Revenue, it was contended before the Tribunal that there are no two rights, one, to receive compensation and the other, a separate right to receive extra or excess compensation, that the right to receive compensation accrued to the owner of the lands as soon as the lands were acquired by the Government, that the decisions of the civil courts enhancing the compensation should be taken to be a fixation of compensation payable for the lands acquired on the date of the acquisition, that those decisions will relate back to the date of the acquisition and that, therefore, the excess compensation awarded by the civil court should be added on to the original compensation awarded by the Land Acquisition Officer for the purpose of evaluating the right to receive compensation for the lands acquired from the assessee.

6. The Tribunal has, however, agree with the contention of the assessee that after the Land Acquisition Officer determined the compensation and the assessee has received the same, even though under protest, it should be taken to be the compensation awarded for the lands acquired, that the assessee is entitled, after receipt of that compensation, to make a claim for enhanced compensation, that such right is separate and independent of the claim for compensation originally made and that such a right to get additional compensation which inheres in the assessee after the Land Acquisition Officer has fixed the compensation, cannot be taken to be part of the original right to get compensation and that the right to get addition compensation which accrued to the assessee after payment of the compensation as fixed by the Land Acquisition Officer, has no value at all and, therefore, nothing should be added to the compensation of Rs. 2,53,939 originally fixed by the Land Acquisition Officer. In that view, the Tribunal held that no addition should be made in any of these years to the net wealth of the assessee as and by way additional compensation. The Revenue is aggrieved by the decision of the Tribunal holding that the additional compensation amounts are not liable to be included in the net wealth of the assessee for any of these years.

7. Before us, learned counsel for the Revenue submits that the decision of the Tribunal is contrary to the principle laid down by the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . In that case, the lands had been acquired compulsorily long prior to the death of the deceased owner. While determining the principal value of the property passing on the death of the deceased, the question of evaluation of the right to receive the compensation which stood substituted for the lands acquired arose. There also, there was an award by the Land Acquisition Officer in the first instance. Thereafter, at the instance of the

assessee, who sought a reference under s. 18 of the Act to the civil court, the compensation was enhanced. The question arose as to whether the authorities could take note of the enhancement of compensation by the civil court. The Supreme Court took the view that the enhancement of compensation by the civil court cannot be taken into account for amending the estimated value of the right to receive the compensation made earlier. But, the reasoning of the Supreme Court is not on the ground that the right to receive additional compensation is an additional right available to the assessee, which had no value, but on a different ground. The reasoning of the Supreme Court is as follows (headnote) :

"The lands which are compulsorily acquired by the Government during the lifetime of the deceased cannot form part of his estate but the right to receive compensation therefore at market value on the date of the notification for acquisition which would accrue to the deceased would be property that would pass on the death of the deceased. Where lands are compulsorily acquired under the Land Acquisition Act, there are no two rights, one, a right to receive compensation and the other, a right to receive extra or further compensation. The claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification u/s 4(1) and it is this right which is quantified by the Collector u/s 11 and by the civil court u/s 26 of the Land Acquisition Act. The Collector''s award is nothing more than an offer of compensation made by the Government to the claimant whose property is acquired. If the offer is accepted, the right to compensation will not survive, but, if the offer is not accepted, or is accepted under protest and a reference is sought by the claimant u/s 18, the right to receive compensation must be regarded as having survived and been kept alive which the claimant prosecutes in the civil court. Merely because the Collector makes an award u/s 11, it cannot be said that the right to get compensation does not survive or ceases to exist or is merged in the award or that what is left after the award with the claimant is a mere right to litigate the correctness of the award. The claimant can litigate the correctness of the award, because his right to compensation is not fully redeemed but remains alive which he prosecutes in the civil court. But, this does not mean that the evaluation of the right done by the civil court subsequently would be its valuation as at the relevant time for the purpose of either the Estate Duty Act or the Wealth-tax Act, for it is the duty of the assessing authority, under either of those enactments, to evaluate the right to receive compensation at the market value on the date of the relevant notification as on the relevant date under the Estate Duty Act or on the valuation date under the Wealth-tax Act."

8. The supreme Court further observed that the estimated value fixed by the assessing authority can either be equal to the Collector''s award or more, but can never be equal to the tall claim made by the claimant in the reference, nor equal to the claim actually awarded by the civil court, inasmuch as the risks or hazards or litigation would be a detracting factor while arriving at a reasonable or proper value of the property as on the date of the deceased''s death. Therefore, the assessing authority will have to evaluate the value of the right to receive

compensation at the market value on the date of the relevant notification having regard to the peculiar nature of the property, its marketability and all the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date.

9. Thus, the Supreme Court has categorically ruled that there are not two rights, one, a right to receive compensation and another, a right to receive additional or excess compensation and that it is for the authorities to value, once and for all, the right to get compensation taking note of all the relevant factors. But, the valuation of the right to receive compensation cannot be below the amount awarded by the Land Acquisition Officer, for the compensation to be paid ultimately cannot the below the offer made by the Collector. The view taken by the Tribunal is not in accord with the view taken by the Supreme Court in the above case. The view taken by the Tribunal that when a land is acquired, the owner of the land has got two rights, one, a right to receive compensation and the other, a right to receive additional or excess compensation, is not legally tenable, having regard to the above decision of the Supreme Court. The Tribunal has then proceeded to value the right to receive the additional compensation treating it as a separate right and held that it has no value at all and, therefore, no amount could be added as additional compensation for the lands for the purpose of determining the net wealth of the assessee in this case. In this case, originally, the right to receive compensation was taken as the amount of compensation awarded by the Land Acquisition Officer and paid to the assessee. Only in a case where the assessee has accepted without demur the value fixed by the Land Acquisition Officer, the right to receive compensation can be taken to have ceased, but where, as in this case, the assessee chose to challenge the correctness of the compensation awarded by the Land Acquisition Officer, the right to receive compensation should be taken to survive the award made by the Land Acquisition Officer. Therefore, the right to receive compensation has not been fully satisfied. The WTO, in this case, is not right in equating the compensation awarded by the Land Acquisition Officer as the market value of the right to receive compensation. After taking note of the amount awarded as compensation by the Land Acquisition Officer, the WTO should have proceeded to evaluate the right to receive compensation taking note of the relevant factors such as the possibility of the assessee getting a higher compensation. In this case, the assessee, not being satisfied with the amount awarded as compensation by the Land Acquisition Officer, has approached the sub-court and that court has enhanced the compensation by Rs. 26,898. Not satisfied with the amount, the assessee filed an appeal before the High Court and in that appeal, a sum of Rs. 3,93,338 was awarded. Since the enhancement made by the sub-court was not challenged by the Government before the High Court, the estimated value of the right to get compensation cannot be less than the market value fixed by the sub-court for the land acquired. Taking that as the basis, the WTO has to estimate the value of the right to get compensation taking into account the vicissitudes of litigation and also the other relevant circumstances

such as the situation of the land, its easy marketability and other relevant factors. We are, therefore, not in a position to agree with the order of the Tribunal holding that as the compensation had already been evaluated, the additional compensation awarded was not liable to be included in the net wealth of the assessee for the various assessment years. But, we have to hold on the basis of the judgment of the Supreme Court, referred to above, that the WTO should be directed to evaluate the right to get compensation taking the valuation adopted by the sub-court as the minimum and such an evaluation will form the basis for determining the market value of the lands acquired as on the relevant date.

10. Learned counsel for the assessee would, however, submit that since the Tribunal has made such an evaluation and has found that the right to get additional compensation is of nil value, no addition could be made by the WTO on the account and since that finding of the Tribunal has not been challenged by seeking a reference on that specific question, it is not possible for this court to interfere with that portion of the order of the Tribunal. As already stated in this case, the Tribunal has proceeded on an erroneous basis that there are two rights available to the assessee, one a right to get compensation and the other a right to get additional compensation, and so long as the right to get additional compensation has no value, no amount could be added on that account, even thought the compensation is enhanced by the civil courts. Thus, the basis on which the Tribunal has proceeded is found to be erroneous in view of the decision of the Supreme Court. The Tribunal proceeds on the basis that there is an additional right to get enhanced compensation and no amount should be added as the value of the right to get addition compensation. Since the basis of the judgment of the Tribunal is erroneous, the finding based on such erroneous view cannot be sustained. As a matter of fact, even the question referred to us is comprehensive enough to include the question as to whether the amounts of compensation awarded by the civil court could be taken as the value of the right to get additional compensation or not. In this view of the matter, we are not in a position to answer the question as it is, and, therefore, we return the reference unanswered, with a direction to the Tribunal to deal with and re-hear the matter in the light of the decision of the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , and to give an opportunity to the Revenue to evaluate the right to get compensation as per the said decision.

11. Now, coming to Tax Case Nos. 411 to 416 of 1978, the question referred in these case is covered by the decision of this court just now pronounced in Tax Cases Nos. 470 to 475 of 1978. Hence, there will be an order in these cases on the same lines as the decision in Tax Cases Nos. 470 to 475 of 1978. There will be no order as to costs in all the cases.

