

(1994) 10 KL CK 0007

In the High Court Of Kerala

Case No : OP No's. 14667, 15110, 15261, 15267, 15178, 15922, 16944 and 16328 of 1992-S and 789 of 1993-S

Commissioner of Wealth Tax

APPELLANT

Vs

P.V. Jacob

RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 3(1)
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1995) 78 TAXMAN 234

Hon'ble Judges : Sujata V. Manohar, C.J.;K. Sreedharan, J

Bench : Division Bench

Advocate : N.R.K. Nair and P.K. Ravindranatha Menon, for the Appellant; N. Srinivasan and M.P. Abraham, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Sujata V. Manohar, C.J.—All these petitions are u/s 27(3) of the Wealth-tax Act, 1957 ("the Act"). As they raise certain common questions, they are being heard together. The assessee was the owner of a rubber estate at Trichur known as "Vellanikara Estates" which was acquired by the Government of Kerala under the Kerala Land Acquisition Act for the purpose of the Kerala Agricultural University at Mannuthy near Trichur. The relevant notifications u/s 3(1) of the Kerala Land Acquisition Act were published on 1-9-1970, 8-9-1970 and 10-11-1970. The property was taken possession of on 1-5-1973. Award was passed in respect of the said property on 15-3-1974 under which an amount of Rs. 19,16,385 was awarded as compensation to the assessee. In addition, a sum of Rs. 9,58,192 was also awarded as compensation to the firm Varkey Jacob & Co. which was the lessee of the estate. The total compensation of Rs. 28,74,577 was divided between the assessee-owner and the lessee-company in the ratio of 2 : 1. The assessee filed reference petitions before the Subordinate Court, Trichur, for enhancement of compensation. Ultimately, the matter was decided by the High Court by its order dated 28-1-1987 in L.A.A. No. 324 of 1977. The High

Court finally determined the enhanced compensation at Rs. 24,03,450. It also awarded interest on the enhanced compensation amount from the date when the property was taken over by the Government.

2. The assessing authorities under the Act were required to consider for the assessment years 1970-71 to 1978-79 as to what should be the market value of the assessee's right to receive compensation in respect of these acquired lands. This would form a part of the assessee's wealth in the said assessment years. Ultimately the Tribunal, Cochin Bench, was required to consider this question. In deciding this question, the Tribunal took into account the following principles: (a) from the assessment year 1971-72 onwards, the assessee had only a right to receive compensation. Such right should be evaluated by applying the present value technique; (b) the value of the right to receive compensation cannot be less than the compensation awarded by the Collector; and (c) appropriate allowance should be given for the risks and uncertainties and other hazards of litigation.

3. The Tribunal, in its order dated 21-6-1991 which covers all these assessment years, divided the assessment years into three groups. For the assessment year 1970-71, the assessee was in possession of the land and there was no threat of acquisition. Hence, the market value of the land was to be taken into account for wealth-tax purposes. The second group of the assessment years is 1971-72 to 1974-75 and the third group is of assessment years 1975-76 to 1978-79. From the assessment year 1971-72 onwards the assessee only had the right to receive compensation which had to be valued. During the assessment years 1971-72 to 1973-74, the compensation amount had not been determined by the Collector. It was determined by the Collector only in March 1974 and the compensation was paid on 28-6-1974. For these three assessment years, therefore, the present value of the right to receive compensation as determined by the Collector is less than the amount actually awarded by the Collector. For the assessment year 1974-75, the full value of this compensation is taken into account. This plus the present value of enhanced compensation constitute the value of total compensation for these four assessment years. Thus, the Tribunal has valued the assessee's right to receive total compensation and its present value. It has also taken into account the fact that the assessee's right to receive compensation must also take care of factors such as the risk and hazards of litigation. It held that during this period, when no part of compensation amount had been actually received by the assessee, a margin of 25 per cent on total compensation would take care of factors such as uncertainties and hazards of litigation. Regard was also had to the fact that there were several appeals against the initial compensation which was awarded and the litigation was spread over a period of 25 years. Taking all factors into account, the Tribunal allowed a discount of 25 per cent on the total compensation (i.e., as awarded by the Collector and enhanced by the High Court) as calculated by the Tribunal in paragraph 6A of its order to arrive at its discounted value on the relevant assessment date.

4. For the subsequent assessment years, the Tribunal has rightly observed that the sum of Rs. 28,74,577 received by the assessee on 28-6-1974 had already entered the wealth stream and, therefore, what was required to be evaluated for and from the assessment year 1975-76 was only the present value of the enhanced compensation as set out in paragraph 6A of the Tribunal's order. The Tribunal, in effect, therefore, gave a discount of 25 per cent only on the enhanced value of compensation for the hazards and uncertainties of litigation for these assessment years. Column 4 in the table in paragraph 6A read with Note F makes this clear.

5. The department has contended that for all these assessment years, the discount for hazards of litigation at 25 per cent should have been allowed only on the enhanced value of compensation and not on the entire compensation. This contention has no merit. In the first place, the right to receive compensation for the lands acquired by the Government is one and indivisible. There is only one right to receive compensation and no separate right to receive extra compensation. The only right to receive compensation for the lands acquired by the Government is at the market value on the date of notification for acquisition [see in this connection *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*,]. Therefore, the Tribunal has rightly considered what should be the allowance made on the entire compensation received by the assessee for the risks and hazards of litigation. In respect of the assessment years 1971 -72 to 1973-74 there is, in any event, no question of allowing discount on only a part of the compensation. Because during these three assessment years, the assessee had not received any part of the compensation at all. Therefore, for these three assessment years, the Tribunal has rightly allowed a discount on the total compensation which the assessee was entitled to receive. The question of splitting up of compensation would in no event arise for these three assessment years.

6. It is also necessary to note that for none of the assessment years, the discounted value of compensation falls below the compensation awarded by the Collector. Hence, the percentage of discount cannot be considered as improper or excessive, especially when one bears in mind the long history of litigation involved.

7. In respect of the remaining assessment years 1975-76 to 1978-79, the department can have no grievance because in effect, the Tribunal has given a deduction only on the enhanced value of compensation, taking into account the fact that a sum of Rs. 28,74,577 had already been received by the assessee and, therefore, was already a part of the assessee's wealth during these assessment years. Therefore, there was no need to make any allowance in respect of this amount which had entered the wealth stream of the assessee. In these circumstances, in our view, the Tribunal has rightly rejected the application of the department for raising question No. 1 and referring the same to us. Question No. 1 is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding/directing deduction of a margin of 25 per cent from the total value of the compensation and should not the Tribunal have confined the deduction only from out of the enhanced compensation ?"

8. Two other questions which are raised by the department are as follows :

"2. Whether, on the facts and in the circumstances of the case, the manner and method of valuing the market value of the assessee's right to receive compensation is right in law and fact ?

3. Whether, on the facts and in the circumstances of the case, should not the interest awarded be considered as part of consideration and is not the order of the Tribunal on the issue against the decision of the Supreme Court in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, ?"

Question No. 2 is not pressed before us. As far as question No. 3 is concerned, the Tribunal in paragraph 9 of its order dated 21-6-1991 has considered the contention of the department that the interest which was awarded by the High Court on the enhanced amount from the date of possession till the date of payment should also be considered as part of the compensation for the purpose of inclusion in the wealth of the assessee. The Tribunal has held that unlike solatium, the award of interest depends on the discretion of the Court. Therefore, the interest amount cannot be included in the amount of compensation for the purpose of evaluating the assessee's right to receive such compensation. We do not see any reason to take a different view.

9. The learned counsel for the department relied upon a decision of the Supreme Court in the case of Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, . That was a case under the income tax Act, 1961 and the Supreme Court held that interest on enhanced compensation awarded by the Court has to be taken as having accrued not on the date of the order of the Court granting enhanced compensation, but as having accrued year after year from the date of delivery of possession of the land till the date of such order. Such interest cannot be assessed to income tax in one lump sum in the year in which the order is made. We are, however, concerned with a slightly different question, viz., whether the interest which was so awarded by the Court can be taken into account for the purpose of determining the assessee's right to receive compensation on a date anterior to the date of the order of the Court awarding interest. The Tribunal has rightly held that since the award of interest is discretionary, it cannot be a factor which would enter the determination of the assessee's right to receive compensation before the date when the order is made. Moreover, the question No. 3 as framed does not arise from the order of the Tribunal at all, because it is on the basis that interest is a part of compensation. This submission does not find a place in the order of the Tribunal at all and does not appear to have been urged before the Tribunal. No useful

purpose would, therefore, be served by directing the Tribunal to raise the above questions and refer them to us. The petitions are, therefore, dismissed.