
(1980) 01 KL CK 0008

In the High Court Of Kerala

Case No : Income-tax Reference No. 7 of 1979

George Paul Puthuran

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 147

Land Acquisition Act, 1894 — Section 20, 28, 4

Citation : (1980) 17 CTR 269 : (1980) 126 ITR 168

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

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

Judgement

Balakrishna Eradi, C.J.—Pursuant to the order passed by this court in O.P. No. 5651 of 1975 u/s 256(2) of the I.T. Act, 1961, the Income Tax Appellate Tribunal, Cochin Bench, has stated a case referring the following questions for decision by this court:

"1. Whether, under the facts and circumstances of the case, should not the interest amount obtained by the assessee be spread over for the entire period commencing from the date of dispossession to that of the decree passed by the court ?

2. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in including the sum of Rs. 1,21,554, the interest on the enhanced compensation, as the income of the assessee for the assessment year 1970-71 ?"

2. During the year 1961, a total extent of 1 acre 83 cents belonging to the assessee was acquired under the Kerala Land Acquisition Act (hereinafter called "the Act") for the Cochin Shipyard Project. Possession of a portion of the property was taken on June 9, 1961, and the rest of the property was also taken

possession of on November 9, 1961. The Land Acquisition Officer awarded compensation to the assessee at the rate of Rs. 570 per cent. Not being satisfied with the said award made by the Land Acquisition Officer, the assessee got the matter referred to the Subordinate Judge's Court, Ernakulam, u/s 20 of the Act. The learned subordinate judge by his decree and judgment dated 28th October, 1968, enhanced the compensation awarded to the assessee by the Land Acquisition Officer by a further sum of Rs. 2,59,750. The court also decreed to the assessee interest at 6% on the additional compensation for the period commencing from the date of dispossession and lasting till the date of payment. The enhanced compensation was paid by the State on November 9, 1969, and such payment included a sum of Rs. 1,25,183 by way of interest.

3. In the assessment made on the assessee for the assessment year 1971-72, the ITO included the entire sum of Rs. 1,25,183 paid by the State to the assessee by way of interest as taxable income for that year. The assessee carried the matter in appeal before the AAC putting forward the contention that the interest paid by the State had to be spread over the entire period commencing from the date of taking possession of the property and ending with the date of actual payment of the enhanced compensation inclusive of the interest and that only the proportionate part of the interest relatable to the assessment year 1971-72 ought to have been treated as taxable income for that year. The AAC did not accept the aforesaid contention, but he, however, held that only Rs. 3,629 being the interest for the period from August 17, 1969 (date of commencement of the accounting period), to November 9, 1969 (date of payment) could be included in the assessment for the year 1971-72 and that the balance of Rs. 1,21,554 representing the interest for the period from June 9, 1961, to August 16, 1969, was to be treated as income which had accrued during the accounting period relevant for the assessment year 1970-71.

4. Pursuant to the aforesaid order of the AAC, the ITO reopened the assessment of the assessee for the assessment year 1970-71, u/s 147 of the I.T. Act. In response to the notice issued to him u/s 148, the assessee filed a return showing his income at the same figure as had been shown in the return on the basis of which the original assessment had been made. It was urged by him before the ITO that the sum of Rs. 1,21,554 received by way of interest was a receipt of capital nature and it should not, therefore, be brought to tax. The ITO rejected the said contention and by his order dated December 14, 1972, determined the total income of the assessee for the assessment year 1970-71, as Rs. 1,41,360 by including the aforesaid sum of Rs. 1,21,554 also as income that had accrued to the assessee during the relevant accounting period. The assessee, thereupon, took up the matter again before the AAC of Income Tax, Ernakulam, reiterating his contention that the interest awarded by the court on the amount of enhanced compensation decreed in his favour was a receipt of capital nature and could not be brought to tax. The said contention was rejected by the AAC. Another contention that was put forward by the assessee before the AAC was that the entire sum of Rs. 1,21,554 could not be considered as the income taxable for the

assessment year 1970-71, and that the interest should have been spread over the entire period from the date of taking possession till the date of actual payment and only the proportionate part of the interest relating to the period from August 17, 1968, to August 16, 1969, could legally be considered as the income of the assessee for the assessment year 1970-71. The AAC accepted the aforesaid contention put forward by the assessee and held that since the assessee had not been keeping any accounts and since the entire amount had been received by him after November, 1969, the assessability had to be considered on accrual basis and only Rs. 15,585 could be considered as the income derived by the assessee by way of interest for the assessment year under consideration. The department thereupon preferred an appeal before the Tribunal contending that the entire sum of Rs. 1,21,554 was liable to be assessed as income of the assessment year in question, namely, 1970-71. The Tribunal allowed the appeal holding that the award of interest on the enhanced compensation decreed by the court was wholly dependent on the discretion to be exercised by the court and consequently the interest allowed on such enhanced compensation could be taken to have accrued to the assessee only on the date of the decree, with the result that it would constitute income that accrued to the assessee during the accounting period relevant to the date of the decree passed by the court. Though the assessee filed an application before the Tribunal u/s 256(1) of the I.T. Act requesting that "the aforementioned two questions should be referred to this court, the Tribunal declined to make a reference. Subsequently, the assessee moved this court by filing O.P. No. 5651 of 1975 for compelling the Tribunal to make a reference and pursuant to the order passed in the said petition, the Tribunal has drawn up a statement of the case and referred the two questions for decision by this court.

5. In *M. Jairam Vs. Commissioner of Income Tax*, , a Division Bench of, this court consisting of Gopalan Nambiyar, Chief Justice, and one of us (Balagangadharan Nair J.) had occasion to consider the very same questions of law in almost identical circumstances. After a detailed discussion of all the relevant aspects and after adverting to the prior rulings of some of the other High Courts on the subject, the Division Bench held that the income earned by an assessed by way of interest awarded by a court u/s 28 of the Central Land Acquisition Act (Section 30 of the Kerala Act) on the excess compensation decreed by it cannot be regarded as having "accrued" or be "deemed to have accrued" on the date of dispossession or on the date of the notification published u/s 4 of the Land Acquisition Act, because at those stages it could not invariably be predicated that the assessee would file an application for reference in the court for excess compensation, or that the court would enhance the compensation, and even if it does so, that it would award interest on the excess compensation. Pointing out that Section 30 of the Kerala Land Acquisition Act (Section 28 of the Central Act) left it to the court to decide, in its discretion, whether or not to award to the claimant interest on the amount of excess compensation decreed by it, the Division Bench held that the right to interest on the excess compensation cannot,

therefore, be said to arise, and income by way of such interest cannot be said to accrue until the court actually decrees interest to the claimant while allowing the excess compensation. The Division Bench, accordingly, held that the interest awarded by the court on the amount of additional compensation decreed to the claimant became the income of the assessee only on the date of the decree passed by the court and not prior to it. We are in respectful agreement with the view so expressed by the Division Bench.

6. Counsel appearing on behalf of the assessee sought to rely on a recent decision of the Allahabad High Court in Addl. Commissioner of Income Tax Vs. Virendra Singh, , where a different view has been taken by a Division Bench of the said court. With respect we do not find it possible to agree with the view taken by the Allahabad High Court, since in reaching the said conclusion due notice does not appear to have been taken of the crucial aspect that the award of interest u/s 28 of the Land Acquisition Act (Central Act) is dependent on the exercise of the discretion by the court and it cannot, therefore, be said that a right to such interest had accrued to the assessee with effect from the date of dispossession itself.

7. We, accordingly, answer question No. 1 in the negative, that is, against the assessee and in favour of the department, and question No. 2 in the affirmative, that is, against the assessee and in favour of the department. The parties will bear their respective costs.

8. A copy of this judgment under the signature of the Registrar and the seal of the court will be communicated to the Tribunal, as required by law.