(1987) 07 KL CK 0014

In the High Court Of Kerala

Case No : ITR No. 112 of 1982

N.R. Vijayan Pillai APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 3(1)

Citation : (1988) 174 ITR 266

Hon'ble Judges : K.S. Paripoornan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.G.K. Warriyar, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the assessee/applicant, the income tax Appellate Tribunal has referred the following question of law, for the decision of this court, u/s 256(1) of the income tax Act, 1961:

Whether, on the facts and circumstances of the case, the entirety of Rs. 44,453 being the interest awarded to the assessee on the enhanced compensation, by the judgment and decree of the learned Subordinate Judge of Ernakulam dated 19-10-1970 in LA. No. 473 of 1964, accrued to the assessee during the previous year relevant to the assessment year 1974-75 and hence was taxable as the income of that year?

2. The respondent is the Revenue. 68.4/5 cents in Sl. No. 501/11 in Ernakulam Village, belonging to the assessee/Hindu undivided family, was acquired under the provisions of the Cochin Land Acquisition Act. The notification u/s 3(1) of the Act was made on June 12, 1962. The award was passed on December 16, 1963. Compensation of Rs. 26,596 was awarded. Possession of the land was taken by the State Government on January 30, 1964. The assessee prayed for enhanced compensation. The reference made in this behalf was taken to file by the Sub-court, Ernakulam, as L.A.R. No. 473 of 1964. The court delivered the judgment on October 19, 1970. A sum of Rs. 1,35,150 was awarded as enhanced

compensation. Interest on such enhanced compensation, from the date of taking possession to the date of payment, amounted to Rs. 44, 453. For the assessment year 1974-75, the assessee offered Rs. 4,444 (1/10th of the interest aforesaid as relating to the year of account) to be assessed. The income tax Officer held that the entire interest accrued to the assessee during the relevant previous year by reason of the judgment and decree of the Sub-court awarding enhanced compensation. The entirety of Rs. 44,453 was assessed as income of the previous year relevant to the assessment year 1974-75. On this basis, he assessed the entirety of the interest "under other sources" by order dated February 27, 1976. The Appellate Assistant Commissioner, by order dated September 23, 1976, affirmed the aforesaid decision of the income tax Officer, based on the decision of the income tax Appellate Tribunal in V.K. Jayaram''s case (I.T.A. No. 501 (Coch) 72-73). The Appellate Tribunal, by order dated December 6, 1977, dismissed the appeal filed by the assessee. The plea that the interest relates to 10 years and that it should be assessed or brought to tax proportionately in each year, raised by the assessee, was negatived. The Appellate Tribunal placed reliance on the earlier decision of the Tribunal in J.T.A. Np. 501 (Coch) /72-73. Thereafter, at the instance of the assessee, the above question of law has been referred for the decision of this court.

3. We heard counsel for the assessee/applicant, Mr. Warriyar, as also counsel for the Revenue, Mr. P.K.R. Menon. Counsel appearing on both sides placed before us a few decisions, raising different aspects of the matter. It is agreed that a Full Bench of this court in Peter John Vs. Commissioner of Income Tax, has held that the right to receive interest on enhanced compensation accrues from day to day from the date on which the Government took possession. On this basis, it was held that the interest on compensation awarded under the Land Acquisition Act runs from day to day, accruing from the date on which the Government took possession of the land, that being the date on which the land owner''s right to receive the entire compensation arises, though determined and paid later. The Full Bench rendered the decision on July 3, 1985. The decisions rendered by this court, in between 1977 and 1985, were not uniform. The Appellate Tribunal had no occasion to appreciate the plea of the assessee, in the light of the aforesaid decision of the High Court as also the Supreme Court decisions referred to therein.

4. On the totality of the facts and circumstances of the case, we are of the view that the matter requires reconsideration. It is for the Appellate Tribunal to apply the relevant law to the facts of the case. Therefore, we are of the opinion, that a more meaningful and effective adjudication is necessary by the Appellate Tribunal, on the facts of this case, in the light of the Full Bench decision of this court in Peter John Vs. Commissioner of Income Tax, . In all the circumstances of the case, we decline to answer the question of law referred to us. It is for the Appellate Tribunal to restore I.T.A. No. 658 (Coch) /1976-77 to its file and consider the matter afresh, in the light of the Full Bench decision of this court in Peter John Vs. Commissioner of Income Tax, . This shall be done, as

expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

5. The income tax referred case is disposed of as above. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the income tax Appellate Tribunal as required by law.

