
(1993) 06 BOM CK 0039

In the Bombay High Court

Case No : Income-tax Reference No. 171 of 1981

R.R. Todiwalla

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-06-1993

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 41, 45, 48, 48(1)

Citation : (1993) 115 CTR 52 : (1994) 208 ITR 65

Hon'ble Judges : V.A. Mohta, J; B.P. Saraf, J

Bench : Division Bench

Advocate : P.J. Pardivala, for the Appellant; Dr. V. Balasubramaniam, for the Respondent

Judgement

V.A. Mohta J.

1. u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred to this court the following questions at the instance of the assessee :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the consideration which was to be taken into account while computing the capital gains included the compensation for the land acquired, as also the 15 per cent. solatium awarded under the provisions of the Land Acquisition Act ?

(2) Whether, in law, the consideration received for the acquisition of the property is to be taken as the compensation fixed by the Government for the compulsory acquisition of the land and nothing more ?"

2. The relevant assessment year is 1974-75. Capital gains pertain to the amount actually received by the assessee in consideration of the acquisition of land under the Land Acquisition Act. As provided u/s 23(2) of the said Act, in addition to the market value of the land acquired, a sum of 15 per cent. on the market value in consideration of the compulsory nature of the acquisition was awarded. The question is whether the amount representing the said 15 per cent. should be

excluded in determining "the full value of the consideration received or accruing as a result of the transfer," as per section 48(1) of the Income Tax Act. We think that to ask that question is to answer it. As per section 45 of the Act, any profits or gains arising from the transfer of a capital asset so chargeable to Income Tax under the head "Capital gains", and is deemed to be the income to the previous year in which the transfer took place. The word "transfer" is specially defined u/s 2(47) of the Act. It includes compulsory acquisition of the capital asset. Section 48 prescribes the mode of computation and deductions admissible in the matter of capital gains. Section 48(1) uses the expression "full value of the consideration received or accruing as result of the transfer of the capital asset". Clauses (a) and (b) of sub-section (1) of section 48 specify the amount to be deducted from the said value mentioned in sub-section (1). Solatium received in consideration of compulsory acquisition is not listed therein. It is true that solatium is an extra payment provided for under the Land Acquisition Act for acquiring the land compulsorily, and, therefore, does not represent the market value. But that would make no difference. It, nevertheless, is a part of compensation and form part of the consideration actually received or accruing as a result of the "transfer". Neither section 45 nor section 48 of the Income Tax Act speaks of the market value. It speaks of the full value of the consideration actually received or accrued.

3. The only decision to which parties have drawn our attention is the case of Akola Electrical Supply Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay City-I, , in which the amount representing 25 per cent. of the value of the lands and buildings determined under the first proviso to section 7(1) of the Electricity Act on account of compulsory purchase was held to be includible in the sale price of the assets for the purposes of determination of the liability u/s 41, sub-section (2), of the Income Tax Act.

4. Under the circumstances, question No. 1 is answered in the affirmative and in favour of the Revenue.

5. Question No. 2 is just the other side of the same coin. It is also answered in the affirmative and in favour of the Revenue.

6. There will be no order as to costs.