

(1987) 11 KL CK 0029

In the High Court Of Kerala

Case No : Income-tax Reference No's. 193 to 196 of 1982 and 360 to 363 of 1985

Sreepadam (HUF)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-11-1987

Acts Referred:

Sreepadam Lands Enfranchisement Act, 1969 — Section 2, 5(1)

Citation : (1988) 72 CTR 52 : (1988) 172 ITR 471

Hon'ble Judges : T. Kochu Thommen, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : N. Srinivasan and P. Krishnamoorthy, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

T. Kochu Thommen, J.—The common question in these I.T.Rs. reads as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the sum of Rs. 15,537 being the moiety of the annuity fixed under the provisions of the Sreepadam Land Enfranchisement Act 20 of 1969 was liable to be taxed as revenue receipt ? "

2. The question in I.T.Rs. Nos. 360 to 363 of 1985 reads as follows:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the execution of the power of attorney by the applicant in favour of the Devaswom Commissioner for maintenance of the temples did not amount to diversion of income at source and, therefore, the entire income is taxable in the hands of the applicant ?"

3. These questions have been referred to us by the Income Tax Appellate Tribunal, Cochin Bench, at the instance of the assessee.

4. The assessment years are 1974-75 to 1977-78. The assessee is the Sreepadam Palace whose lands were enfranchised, on payment of compensation,

under the Sreepadam Lands Enfranchisement Act, 1969 (Act 20 of 1969). The Sreepadam lands are denned under the Act as lands comprised in certain areas of the Chirayinkil Taluk, the revenue from which had been wholly assigned in favour of the Sreepadam Palace, as well as certain other lands owned by the Sreepadam Palace. Some of the lands owned by the Sreepadam Palace were tharissu which are referred to in Section 2(j) and in respect of which compensation was payable under the Act in a lump sum bearing interest at the rate of 5 per cent. per annum from the appointed day. We are not concerned with tharissu. In respect of the other lands which are specifically referred to in Section 2(i), the compensation payable was in the form of annuity in perpetuity at the rate of Rs. 31,075 per year. There is some dispute as to whether the Sreepadam Palace had any proprietary right in the lands mentioned in Section 2(i). Whatever be the nature of the right which the assessee had in those lands, the compensation provided under the Act is in the form of annuity payable in perpetuity.

5. We shall now read the relevant portion of Section 5 which provides for compensation in respect of lands falling u/s 2(i), i.e., lands other than tharissu, and the rights in respect of which are extinguished u/s 3(a) and (b). Section 5(1) reads :

"5. Compensation to Sreepadam Palace.--(1) The Government shall, by way of compensation for the extinguishment of the right, title and interest of the Sreepadam Palace under Clause (a) of Section 3 and for the vesting in the Government of the Sreepadam lands held on kuthakapattam, under Clause (b) of that section, pay in perpetuity to the Sreepadam Palace every financial year beginning with the financial year in which the appointed day falls, an amount of Rs. 31,075 as annuity."

6. It is important to note that what is payable as annuity at the rate of Rs. 31,075 is payable in perpetuity. This payment is byway of compensation for extinguishment of right, title and interest of the Sreepadam Palace over certain lands falling u/s 3(a) and for the vesting in the Government of the Sreepadam Palace lands held on kuthakapattam and referred to in Section 3(b). Whatever be the distinction between these two types of lands, the compensation payable in respect of them is, in terms, annuity.

7. Counsel for the assessee contends that in respect of lands falling u/s 2(i) (corresponding to Section 3(a) and (b)) there is deprivation of the proprietary right and the compensation payable therefore is a capital sum.

8. Counsel for the Revenue, rightly in our view, points out the distinction between money payable as annuity in exchange for a capital asset and capital sum payable in instalment in exchange for a capital asset. Counsel submits that, even assuming that the rights acquired under the Act were in the nature of proprietary rights, the compensation was not payable in instalments of a capital sum representing the value of the assets, but in annuity in exchange for a capital

asset. He refers to the principle stated by the Supreme Court in Commissioner of Income Tax, Uttar Pradesh Vs. Kunwar Trivikram Narian Singh, ;

"It seems to us that where an owner of an estate exchanges a capital asset for a perpetual annuity it is ordinarily taxable income in his hands. The position will be different if he exchanges his estate for a capital sum payable in instalments. The instalments when received would not be taxable income."

9. The Act clearly says that the annuity is payable in perpetuity. Apart from the expression "annuity", the fact that the annuity is payable for all times to come shows that what is paid every year is not an instalment of a capital sum. If that were so, there would be no question of paying by instalments in perpetuity even after exhausting the capital sum. Whatever be the capital sum which represents the value of the assets affected by the statute, the annuity remains payable in perpetuity and it is, therefore, not relatable to the quantum of the value of the capital assets. Section 5(1) thus falls squarely within the first part of the dictum laid down by the Supreme Court. It is in our view an annual payment in perpetuity in exchange for a capital asset and not payment in instalments of a capital sum representing the value of the capital asset. Annuity, accordingly, is a revenue receipt and is, therefore, taxable.

10. As regards the second question, the contention on behalf of the assessee is that by reason of an irrevocable and binding power of attorney registered on August 3, 1973 (annexure D), and executed by the assessee in favour of the Assistant Devaswom Commissioner, there is a diversion of the total amount due to the assessee at the very source of receipt and, therefore, it is not assessable as income in the hands of the assessee. It is not disputed that what is diverted under annexure D is money due and payable to the assessee under the statute. The fact that the money so due and payable is authorised to be collected by the power of attorney holder, albeit under an irrevocable and binding authority, does not belie the fact that what is paid by the State to the power of attorney holder is money which has already become due and payable to the assessee and, therefore, such payment to the power of attorney holder is not a diversion before the income accrued to the assessee. It is out of the income earned by the assessee that payment has been effected in favour of the Assistant Devaswom Commissioner. Accordingly, we do not accept the contention that the said amount is not assessable as income in the hands of the assessee.

11. In the circumstances, we answer the questions referred to us in the affirmative, that is, in favour of the Revenue and against the assessee.

12. We direct the parties to bear their respective costs in these tax referred cases.

13. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.