
(1987) 04 RAJ CK 0021

In the Rajasthan High Court

Case No : Income Tax Reference No. 19 of 1978

Syed Abdul Basir

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-04-1987

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 45
Land Acquisition Act, 1894 — Section 4

Citation : (1988) 69 CTR 209 : (1988) 170 ITR 566

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.L. Kalia, for the Appellant; R.N. Surolia, for the Respondent

Judgement

1. This reference made at the instance of the assessee is to answer the following questions of law, namely :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the property in question was not agricultural in the year of account ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was capital gain of Rs. 3,27,994?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in including the said capital gains in the previous year relevant to the assessment year under consideration ? "

2. The assessee has been assessed in the status of an individual. The relevant assessment year is 1965-66 corresponding to the financial year 1964-65. The assessee received compensation for compulsory acquisition of some land on Beawar Road at Ajmer amounting to Rs. 4,33,043. He was also paid interest thereon. The possession of land was taken on April 17, 1964, as a result of the compulsory acquisition. The assessee was given a notice by the Department to show cause why the capital gains arising on the amount of compensation should

not be taxed as a capital gain. The Income Tax Officer found that the assessee received Rs. 4,33,043 as compensation for the land and the market value thereof as on January 1, 1954, was Rs. 1,05,049, as a result of which the capital gain amounted to Rs. 3,27,994. Accordingly, the Income Tax Officer completed the assessment on a total income calculated by including the capital gain of Rs. 3,27,994. The assessee's appeal was dismissed by the Appellate Assistant Commissioner who affirmed the Income Tax Officer's above conclusion as well as the further conclusion that this capital gain had to be taxed for the assessment year 1965-66. The assessee's further appeal to the Tribunal also failed. The assessee then applied to the Tribunal for a reference to this court for decision of the above questions of law u/s 256(1) of the Income Tax Act, 1961. This is how the reference has been made at the instance of the assessee for decision of the above-quoted questions of law.

3. In respect of the aforesaid first question, learned counsel for the assessee conceded that the Tribunal was justified in holding that the property was not agricultural land. It is for this reason that the facts relating to this question have not been narrated by us earlier. The first question has, therefore, to be answered against the assessee and in favour of the Revenue.

4. In respect of the aforesaid second question, learned counsel for the assessee contended that the Tribunal did not consider a part of the evidence which would show that the value of the property as on January 1, 1954, was in excess of Rs. 1,05,049, as a result of which the amount of capital gain has been computed at a higher figure. Learned counsel contended that the rate at which the value of the land as on January 1, 1954, has been calculated is lower than that proved by the assessee. It is sufficient to say that the finding reached on the basis of appreciation of the evidence on the point is ultimately one of fact in the present case, since in arriving at the same no principle of law was required to be applied. We also find that the value of the property as on January 1, 1954, has been calculated at a rate found proved by the evidence on record. The higher rate of Rs. 10 per sq. yard claimed by the assessee to be the prevailing rate on January 1, 1954, was not accepted since it was at that rate that an adjacent parcel of land was sold much later in 1966 to which reference has been made. There is thus no basis to decide this question in favour of the assessee.

5. The last question related to the particular assessment year in which the said capital gain had to be taxed. The Tribunal has relied on a decision of the Supreme Court in *Jethmull Bhojraj Vs. State of Bihar and Others*, , to support its conclusion. The definition of "transfer" contained in Section 2(47) of the Income Tax Act, 1961, provides that the transfer in relation to a capital asset includes the compulsory acquisition thereof under any law. The Tribunal has held that the transfer giving rise to the capital gain of Rs. 3,27,994 took place on April 17, 1964, when possession of the land was taken and the same vested in the Government. This being in the assessment year 1965-66 corresponding to the financial year 1964-65, the capital gain was taxed in the assessment year

1965-66. Learned counsel for the assessee contended that the date of vesting of the property in the Government should be deemed to be the date of the notification issued u/s 4 of the Land Acquisition Act. This contention, being contrary to the provisions of the Land Acquisition Act, cannot obviously be accepted. This question is also, therefore, to be answered against the assessee.

6. Consequently, the reference is answered against the assessee and in favour of the Revenue as under :

1. That, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the property in question was not agricultural;
 2. That, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was capital gain of Rs. 3,27,994 ; and
 3. That, on the facts and in the circumstances of the case, the Tribunal was justified in including the said capital gain in the previous year pertaining to the relevant assessment year under consideration.
7. The parties shall bear their own costs.