

(1980) 03 KL CK 0015
In the High Court Of Kerala
Case No : OP No. 2150 of 1977-E

V.A. Vasumathi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-03-1980

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 45, 48, 48(1), 53
Land Acquisition Act, 1894 — Section 20

Citation : (1980) 4 TAXMAN 94

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : K.S. Paripoornan and G. Sivarajan, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

T. Kochu Thommen, J.—The Commissioner of income tax (the 1st respondent) by the impugned order (Ex. P-3) held that the petitioner was not entitled, in computing the capital gains, to deduct the expenditure incurred by him for the purpose of prosecuting in a civil court his claim for enhancement of the compensation. The Commissioner held that such expenditure was not incurred in connection with the transfer of a capital asset.

Section 45 of the income tax Act, 1961, defines capital gains as follows:

(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53, 54, 54B, 54D and 54E be chargeable to income tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

"Transfer" in relation to a capital asset, includes compulsory acquisition thereof under any law [section 2(47)]. Section 48 reads:

48. Mode of computation and deductions. - The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset

the following amounts, namely:--

(i) expenditure incurred wholly and exclusively in connection with such transfer;

In computing the capital gains, the expenditure incurred wholly and exclusively in connection with the transfer of the capital asset has to be deducted. The question is whether the expenditure incurred for the purpose of litigation pursuant to a reference u/s 20 of the Land Acquisition Act is an expenditure wholly and exclusively incurred in connection with the transfer of the capital asset.

2. The words "in connection with such transfer" mean intrinsically related to the transfer. Only such expenditure as is wholly and exclusively related in an intrinsic manner to the transfer is a deductible expenditure. Counsel for the respondents, Shri Ravindranatha Menon, however, contends that the expenditure, to come within the meaning of section 48 of the income tax Act, should have been incurred prior to the transfer. Money spent in litigation for enhancement of compensation is money spent subsequent to the transfer. Such expenditure, counsel points out, is not incurred in connection with the transfer. He says, for example, brokerage paid or other expenditure incurred prior to the transfer would come within the scope of section 48(1) of the income tax Act. But if the expenditure was incurred subsequent to the transfer, section 48(1) will have no application. In other words, what is important in terms of section 48(1), according to counsel, is the time at which the expenditure was incurred.

3. In answer to this seemingly technical contention, Shri C.N. Ramachandran, appearing for the petitioner, has brought to my notice the decision of the Court of Appeal in *Johnson v. Johnson* [1952] 1 All ER 250, where their Lordships accepted the meaning ascribed to the expression "in connection with" by McFarlane J. in *In re Nanaimo Community Hotel Ltd.* [1944] 4 DLR 638. "In connection with", according to McFarlane J., "include matters occurring prior to as well as subsequent to or consequent upon so long as they are related to the principal thing ". Shri Ramachandran, on the basis of that meaning, submits that any expenditure, whether incurred prior to or after the transfer, if it is intrinsically connected with the transfer has to be deducted, in computing the capital gains, from the full value of the consideration.

4. What is important to note is that the expenditure has to be connected with the transfer. The process of transfer by compulsory acquisition is completed only upon the determination of the compensation. If the amount awarded by the Collector is accepted by the owner without question, the proceedings come to an end. If, however, the owner challenges the award, the question disputed, namely, the amount payable, will have to be determined judicially. It is only upon a final determination of that question by the competent court do the acquisition proceedings come to an end: *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . Where a reference is made u/s 20 of the

Land Acquisition Act the litigation which results therefrom is a proceeding intimately and intrinsically connected with the acquisition. All expenditure wholly and exclusively incurred in connection with such litigation is, therefore, an expenditure within the meaning of section 48 of the income tax Act. For the purpose of this section, it is, in my view, immaterial that the expenditure was incurred subsequent to the award so long as it was incurred wholly and exclusively in connection with the compulsory acquisition.

5. The amounts in respect of which deduction is claimed by the petitioner are stated to be moneys spent in litigation arising from a reference u/s 20 of the Land Acquisition Act. This is a matter which has to be determined by the Commissioner. Ex. P.3 is unsustainable in so far as the Commissioner held that the expenditure said to have been incurred as a result of a reference u/s 20 of the L.A. Act is not deductible u/s 48(1) of the income tax Act. It is, accordingly, quashed. The 1st respondent is directed to determine the nature of the amount and pass appropriate orders in the light of what is stated above. The O.P. is disposed of accordingly. No costs.