(1985) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Case Referred No. 77 of 1978

Vittal Reddy APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-04-1985

Acts Referred:

Income Tax Act, 1961 — Section 139, 143, 144, 217, 246
Land Acquisition Act, 1894 — Section 11, 28

Citation : (1987) 30 TAXMAN 252

Hon'ble Judges : Seetharam Reddy, J;Jagannadha Rao, J

Bench : Division Bench

Advocate : Y.V. Anjaneyulu, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Seetharam Reddy, J.—The twin questions that arise at the instance of the assessee in this reference are :

"1. Whether, on the facts and in the circumstances of the case, the interest awarded by the City Civil Court on the enhanced compensation did not accrue from year to year from the date of acquisition, but accrued only on 12-7-1971 when the City Civil Court''s order granting additional compensation was given and as such assessable to tax in entirety in the assessment year 1972-73 ?

2. Whether, on the facts and in the circumstances of the case, an appeal lies against the charge of penal interest u/s 217 of the income tax Act, 1961, when the ground regarding the levy of penalty interest is raised along with other grounds of appeal ?"

The relevant facts in brief are : the assessees'' lands were acquired by notification issued u/s 4 of the income tax Act, 1961 (''the Act''), on 3-5-1967. The Land Acquisition Collector made an award u/s 11 of the Land Acquisition Act, 1894, and took possession of the lands on 26-12-1970, which falls within the previous year relevant to the assessment year 1971-72. However, not satisfied with the compensation awarded, the assessees went to the City Civil Court, Hyderabad, which enhanced compensation on 12-7-1971 which fell within the previous year relevant for the assessment year 1972-73. It also awarded interest amounting to Rs. 23,317 u/s 28 of the Land Acquisition Act.

2. The case of the assessees is that the enhanced compensation awarded by the City Civil Court related back to the date of the acquisition of the property and that from the date of acquisition the right to the interest on the enhanced compensation accrued from year to year. The ITO, however, did not accept the contention of the assessees that the interest on the enhanced compensation awarded by the Civil Court accrued from year to year from the date of the acquisition and that what was assessable to tax in the assessment year 1972-73 was only the interest relatable to the relevant previous year but not the entire interest, awarded by the civil court in the relevant previous year. According to the ITO, however, the right of the owners of the land to interest on the enhanced compensation had accrued to the assessees only on the date when the civil court delivered its judgment awarding enhanced compensation and also the interest thereon and that since that right accrued to the assessees only in the previous year relevant to the assessment year 1972-73, the whole of the interest was in consequence liable to be taxed in the assessment year 1972-73. On appeal, it was confirmed by the AAC and on farther appeal to the Tribunal it was held, while dismissing the appeals, as under :

"The assessees became entitled to the interest on the enhanced compensation because the civil court, while awarding enhanced compensation had also exercised discretion vested in it of awarding interest on such enhanced compensation and therefore that the entire interest awarded by the civil court on the enhanced compensation was liable to be assessed and rightly assessed in the assessment year 1972-73."

3. Reliance was placed on a decision of this Court in Commissioner of Income Tax Vs. Smt. Sankari Manickyamma, . It was further held that the AAC is justified in not entertaining the ground relating to charging of interest u/s 217 of the Act on the ground that no appeal is provided against the charge of interest. It, therefore, eventually held while relying on the observations made by the Benches of the Tribunal at Hyderabad and also a decision of the Calcutta High Court in Singho Mica Mining Co. Ltd. v. CIT 1975 Tax LR 1109 that the AAC is justified in not entertaining the ground relating to levy of interest u/s 217.

4. Coming to the first question, we have no hesitation in holding that the interest awarded by the civil court on the enhanced compensation was liable to be assessed in the assessment year 1972-73 as the enhanced compensation of interest, was awarded in the relevant previous year. The interest so awarded was a discretionary one in contradiction to the interest that would accrue even at a time when the owner of the land is dispossessed by virtue of the notification issued u/s 4(1) and, therefore, the contention of the assessee, that the interest accrued should be spread over on the theory of relating back to the date of

dispossession, will not hold good and, therefore, the contention in that behalf is rejected.

5. Now, we come to the next question, whether the ground relating to charging of interest u/s 217 could be entertained though no appeal is provided against the charging of interest under the said section. It is true that u/s 246 of the Act there is no explicit provision enabling the assessee to prefer an appeal aggrieved against the orders of the ITO or the AAC, as the case may be, under any of the enumerated provisions thereunder.

Section 246(c) reads thus :

"(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under subsection (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed ;"

In view of the above, our judgment is that an assessee is entitled to prefer an appeal against the charging of interest u/s 217 though there is no explicit provision to that effect under any of the enumerated provisions enacted u/s 246. This is quite implicit in clause (c) of section 246, which is comprehensive as it reads ''where the assessee denies his liability to the assessed under this Act''. Since the assessee who is assessed in regard to the amount which he denies stating that he is not liable to be assessed, certainly it would be competent for him to have his plea against the charging'' of interest u/s 217, entertained, in the appeal. That apart, simple interest leviable at the rate of 12 per cent per annum, for the alleged default in payment within the meaning of section 217 itself postulates that the assessee must have knowingly committed the default, which cannot ostensibly be the case here ; and so is opposed to the very principle of subjecting the assessee to a more penal interest.

6. In this case since the assessee objects to the very assessment, in a particular year, it cannot, therefore, be stated that he was having the knowledge of liability to pay the amount and yet defaulted in payment of this amount. This Court in Commissioner of Income Tax Vs. Dr. S. Roopkaran, Wherein circumstances were analogous, while answering a question, viz., "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in entertaining the ground of appeal relating to charging of interest u/s 139 of the income tax Act, 1961 ?"

7. Since section 139 of the Act is not one of the enumerated items u/s 246, the ratio of the above decision will be equally applicable to the case u/s 217 as well.

8. For all these reasons we hold that the appeal lies against the charging of penal interest u/s 217, when the ground regarding the levy of interest is raised along with other grounds of appeal.

9. In the result, we answer the question No. 1 in the affirmative and against the

assessee ; whereas the question No. 2 is answered in the affirmative and in favour of the assessee. The learned counsel for the assessee, Shri Y.V. Anjaneyulu, made an oral request for grant of leave to appeal to the Supreme Court, we certify it to be a fit case for appeal to the Supreme Court inasmuch as similar point relating to question No. 1 is already before the Supreme Court in an appeal in Smt. Sunkari Manickyamma''s case (supra). Accordingly, leave is granted.

Reference answered in the affirmative.