

Dr. Shamlal Narula

Vs

Commissioner of Income-Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala

Civil Appeal No. 503 of 1963

(K. Subha, J. C. Shah, S. M. Sikri JJ)

09.04.1964

JUDGMENT

SUBBA RAO J. -

This appeal by certificate granted by the High Court of Punjab raises the question whether interest paid under section 34 of the Land Acquisition Act, 1894, hereinafter called the Act, is of the nature of a capital receipt or of a revenue receipt.

The relevant facts are not in dispute and they may be briefly stated. The appellant, Dr. Shamalal Narula, is the manager of a Hindu undivided family, which owned, inter alia, 40 bighas and 11 biswas of land in the town of Patiala. The Patiala State Government initiated land acquisition proceedings for acquiring the said land under Regulations then prevailing in the Patiala State. It is common case that the State Regulations are in pari materia with the provisions of the Act. The State of Patiala first merged into the Union of Pepsu and later the Union of Pepsu merged into the State of Punjab. It is also common case that there was a Land Acquisition Act in the Union of Pepsu containing provisions similar to those obtaining in the Act. On October 6, 1953, the Act was extended to the Union of Pepsu. On September 30, 1955, the Collector of Patiala made an award under the Act as a result of which the appellant received on December 1, 1955, a sum of Rs. 2,81,822, which included a sum of Rs. 48,660 as interest up

"Whether on a true interpretation of section 34 of the Land Acquisition Act and the award given by the Collector of Pepsu on the 30th September, 1955, the sum of Rs. 48,660 received by the appellant under the award Indian Income-tax Act ?"

The said reference was heard by a Division Bench of the High Court and it held that the said amount was not a capital but a revenue receipt and as such liable to tax under the Indian Income-tax Act. Hence the present appeal.

Learned counsel for the appellant raised before us two contentions, namely : (i) the sum of Rs. 48,660 received by the appellant under the award was compensation for depriving him of his right to possession of his property and was, therefore, a capital receipt not liable to tax; and (ii) whatever may be the character of the amount awarded under section 34 of the Act by way of interest in a case where possession of the land has been taken by the State after the award, in a case where possession of the land acquired has been taken before the award, it would be a capital receipt for it is said that in the latter the interest necessarily takes the character of compensation for depriving the owner of the land of his right to possession.

On behalf of the revenue the order of the High Court is sought to be sustained for the reasons stated therein.

The question raised turns upon the true meaning of the provisions of section 34 of the Act. It reads :

"When the amount of such amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

The section itself makes a distinction between the amount awarded as compensation and the interest payable of on the amount so awarded. The interest shall be paid on the amount awarded from the time the Collector takes possession until the amount is paid or deposited. To appreciate the scope of the section it is necessary to notice briefly the scope of an award and the manner in which possession is taken under the Act. After the statutory notifications are issued and the requisite notice is given to the persons interested in the land so acquired, the Collector, after holding the necessary enquiry, makes an award, inter alia, determining the amount of compensation payable for the land so acquired. Section 15 of the Act says that in determining the amount of compensation the Collector shall be guided by the provisions contained in sections 23 and 24. Section 23 provides for the matters to be considered in determining compensation; section 24 describes the matters to be neglected in determining the compensation

Another approach to the problem leads to the same result. Under section 16 of the Act when the Collector, has made an award under section 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Under section 17 thereof :

"In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purpose or for a company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances."

Under both the sections the land acquired vests absolutely in the Government after the Collector has taken possession in one case after the making of the award and in the other, even before the making of the award. In either case, some time may lapse between the taking of possession of the acquired land by the Collector and the payment or deposit of the compensation to the person interested in the land acquired. As the land acquired vests absolutely in the Government only after the Collector has taken possession of it, no interest therein will be outstanding in the claimant after the taking of such possession : he is divested of his title to the land and his right to possession thereof, and both of them vest thereafter in the Government. Thereafter he will be entitled only to be paid compensation that has been or will be awarded to him. He will be entitled to compensation, though the ascertainment thereof may be postponed, from the date his title to the land the right to possession thereof have been divested

The legislature expressly used the word "interest" with its well known connotation under section 34 of the Act. It is, therefore, reasonable to give that expression the natural meaning it bears. There is an illuminating exposition of the expression "interest" by the House of Lords in *Westminster Bank Ltd. v. Riches*. The question there was whether, where in an action for recovery of any debt or damages the court exercises its discretionary power under a statute and orders that there shall be

included in the sum for which the judgment is given interest and on the debt or damages, the sum of interest so included is taxable under the Income Tax Acts. If the said amount was "interest of money" within Schedule D and General Rule 21 of the All Schedules Rules of the Income Tax Act, 1918, income-tax was payable thereon. In that context it was contended that money awarded as damages for the detention of money was not interest and had not the quality of interest. Lord Wright observed :

"The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether money was due for any other reason in law. In either case the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute, as for instance under section 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The essential quality of the claim for compensation is the same, and the compensation is properly described as interest."

This passage indicates that interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered because he had not that use. It is something in addition to the capital amount, though it arises out of it. Under section 34 of the Act when the legislature designedly used the word "interest" in contradistinction to the amount awarded, we do not see any reason why the expression should not be given the natural meaning it bears.

The scheme of the Act and the express provisions thereof establish that the statutory interest payable under section 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired.

We shall now proceed to consider the case law cited at the Bar. Where a tribunal directed the Improvement Trust, under the provisions of section 28 of the Land Acquisition Act, to pay interest to the assessee from the date of taking possession of the property to the date of payment, a Division Bench of the Allahabad High Court held, in Behari Lal Bhargava v. Commissioner of Income-tax, that the interest so awarded was in the nature of compensation for the assessee's right to retain possession of the property acquired and, therefore, was not income liable to tax. The reason for the said conclusion is stated thus :

"It is not the 'fruit of a tree' - to borrow the simile used in Shaw Wallace's case - but was compensation or damages for loss of the right to retain possession; and it seems to us that section 28 was designed as a convenient method of measuring such damages in terms of interest."

As we have pointed out earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter the owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. Therefore, the interest awarded under section 28 of the Act, just like under section 34 thereof, cannot be a compensation or damages for the loss of the right

to retain possession but only compensation payable by the State for keeping back the amount payable to the owner. Adverting to the said decision a Division Bench of the Madras High Court in Commissioner of Income-tax v. CT. RM. N. Narayanan Chettiar observed :

" with great respect we find ourselves unable to follow the reasoning. Certainly we are not prepared to accept the judgment as a guide to the decision in the present case."

So was the interest granted to an assessee under section 18A of the Income-Tax Act on the advance payment of tax by him under the provisions of that section held to be income taxable in his hands : see Commissioner of Income-tax v. Maharajadhiraj Sir Kameshwar Singh. There, when the decision of the Allahabad High Court in Behari Lal Bhargava's case was relied upon, the learned judges, refusing to follow it, observed thus :

"It is not a matter of discretion for the Central Government but the duty to pay interest is imposed by the statute. Apart from this I think (with great respect) that the Allahabad decision is of doubtful authority. The decision is not consistent with the principle laid down in Schulze v. Bensted and Commissioners of Inland Revenue v. Barnato. The Madras High Court expressly declined to follow the Allahabad case in Commissioner of Income-tax v. Narayanan Chettiar."

The Kerala High Court in P. V. Kurien v. Commissioner of Income-tax held that interest paid on the enhanced amount of compensation directed to be paid by an appellate court in an appeal against an award of compensation for compulsory acquisition of land under the Land Acquisition Act represented capital and was not income liable to be taxed under the Indian Income-tax Act. It was argued there, as is argued before us, that the interest awarded was a capital sum estimated in terms of interest. In coming to the conclusion which they did, the learned judges relied upon the decision of the Judicial Committee in Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission and that of the Madras High Court in Revenue Divisional Officer, Trichinopoly v. Venkatarama Ayyar. In the former, the Judicial Committee directed the purchaser who had taken delivery and possession of the property he had purchased before the sale to pay interest to the vendor on the purchase money from the date he had taken possession when possession was taken by them and, therefore, it may be said that the owner was given interest in place of his right to retain possession of the property. But in a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under section 16 or section 17 of the Act. We, therefore, hold that the statutory interest paid under section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income-tax Act. The order of the High Court is therefore, correct.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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