

## SUREME COURT OF INDIA

Rama Bai

Vs.

Commissioner Of Income-Tax, Andhra Pradesh Hyderabad

(J Verma, N Ojha and S Ranganathan JJ.)

08.11.1989

### ORDER

1. At the instance of the assessee, we draw up a statement of the case, as, in our opinion, a question of law does arise out of the order of the Tribunal in I. T. A. No. 1363 (Hyd) of 1972-73.

2. The assessee owned 42 acres 6 guntas of lands situate in a village Nacharam near Hyderabad. The lands are covered by Survey No. 55 (16. acres 33 guntas), Survey No. 58 (13 acres 12 guntas) and Survey No. 59/2 (42 acres 06 guntas). The Government of Andhra Pradesh acquired these lands under the Land Acquisition Act and a notification under Section 4 of the said Act was published on May 14, 1964, in the Gazette. Possession was taken by the Government between October 27, 1964, and November 7, 1964. The Special Deputy Collector, Land Acquisition, awarded compensation of Rs. 21,075, solatium of Rs. 3,161 and interest of Rs. 1,004, in all amounting to Rs. 25,240, as per his award dated November 20, 1965. The assessee being aggrieved by the amount of compensation awarded sought for a reference under Section 18 of the Land Acquisition Act and the matter came up before the Second Addl. Chief Judge, City Civil Court, Hyderabad (Registered as O.P. No. 141 of 1966). The court, while disposing of the reference under Section 18, awarded compensation of Rs. 2,04,007 and a solatium of Rs. 30,600. It is thus found that the assessee got enhanced Compensation to the extent of Rs. 2,34,607. Interest to the extent of Rs. 37,529 was also awarded on the enhanced compensation. The order of the City Civil Court was confirmed by the High Court of Andhra Pradesh in the appeal filed by the State Government in C.C.A. No. 13 of 1968, by the judgment of the High Court dated October 26, 1970.

3. The Income-tax Officer, while making the assessment for the assessment years 1967-68 and 1968-69, held that the right to receive interest on the enhanced compensation arose on the date when the City Civil Court passed the order, i.e., on July 7, 1967. The assessee's objection to this was that the interest should be distributed over the period commencing from the date of dispossession of the assessee under the Land Acquisition Act till the date of payment. This was not accepted by the Income-tax Officer. Accordingly, the Income-tax Officer originally added a sum of Rs. 26,510 as the interest liable to be included for the assessment year 1968-69. For the assessment year 1967-68, he included a sum of Rs. 8,412 which was returned as income by the assessee herself in the return, being the interest relatable to the accounting year relevant to the assessment year. For the assessment year 1968-69, the Income-tax Officer passed an order under Section 154 on June 16, 1972, and

brought to tax a sum of Rs. 29,870 in the place of Rs. 26,510 being the interest on the enhanced compensation.

4. The assessee filed appeals for both the years before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, relying on the decision of the Mysore High Court in the case of CIT v. V. Sampangiramaiah reported in [ ], held that the inclusion of interest on the enhanced compensation for the assessment year 1968-69 is proper. The inclusion of interest for the assessment year 1967-68 was held to be not correct as the same amount has already been included in the assessment year 1968-69. Thus, he allowed the assessee's appeal for the assessment year 1967-68 and dismissed the assessee's appeal for the assessment year 1968-69. The assessee filed an appeal for the assessment year 1968-69 whereas the Revenue filed an appeal for the assessment year 1967-68 as a protective measure.

5. Both the appeals came up together for disposal before the Tribunal. The Tribunal held that the matter is concluded against the assessee by the decision of the Andhra Pradesh High Court in the case of CIT v. Sankari Manickyamma . On behalf of the assessee however, it was pointed out that there is an apparent conflict between this decision and the decision of the Hon'ble Andhra Pradesh High Court in the case of Mrs. Khorshed Shapoor Chenai v. Assistant Controller of Estate Duty . The Tribunal, however, observed that 'there is no conflict between the two and that the point is covered by S. Manickyamma's case . On behalf of the assessee, it was also pointed out that other High Courts have taken a different view. They are:

(i) Punjab and Haryana High Court in the case of CIT v. Dr. Sham Lal Narula ;

(ii) Madras High Court in the case of T.N.K. Govindarajulu Chetty v. CIT ; and

(iii) Orissa High Court in the case of Joyanarayan Panigrahi v. CIT .

6. The Tribunal observed that the above decisions support the contention of the assessee. Nevertheless, the Tribunal, being bound by the decision of the Hon'ble Andhra Pradesh High Court, held that the assessee's contention should be rejected and the entire interest on enhanced compensation was liable to be taxed for the assessment year 1968-69. Consequently, the appeal of the assessee for the assessment year 1968-69 was dismissed. The appeal of the Revenue for the assessment year 1967-68 was also dismissed.

7. On the above facts, we are of the opinion that the following question of law arises out of the order of the Tribunal:

Whether, on the facts and in the circumstances of the case, the interest of Rs. 29,870 is liable to be assessed for the assessment year 1968-69?

8. Since there is a conflict between different High Courts on the above question, we think it is expedient to refer the above question of law direct to the Hon'ble Supreme Court of India in accordance with Section 257 of the Income-tax Act, 1961. We may also mention that the above question arises quite often and it is necessary that an authoritative pronouncement of the highest court should be obtained. We, therefore, make the reference to the Supreme Court through the President of the Income-tax Appellate . Tribunal.

9. All these three reference applications are consolidated for the sake of convenience as the issue involved is the same. By these applications, the applicants require the Tribunal to state a question of law which is said to arise out of the Tribunal's orders dated December 15, 1975, in I.T. As. Nos. 1158, 1159 and 1160/Hyd of 1974-75. In our opinion, a question of law does arise out of the Tribunal's order and we draw up a statement of case.

10. Agricultural lands belonging to the late R.S. Chenai situated in village Qutbillapur, Medchal Taluq, were acquired by the Government for establishing units I and II of the Hindustan Machine Tools Factory. The extent of land acquired was 355 acres and 32 guntas. Pursuant to the acquisition notification, the lands were taken possession of between December 4, 1963, and March 15, 1964. By that time, Sri S.R. Chenai died and his only son and legal heir, Sri R.S. Chenai, also died shortly thereafter. The compensation was received by the applicants who were legal heirs of the deceased and shared by them in accordance with law. In awarding the compensation; the Acquisition Officer determined the basic compensation at Rs. 1,000 per acre, viz., Rs. 3,55,320, and added thereto solatium of 15% amounting to Rs. 53,298 and interest of Rs. 20,742 from the date of possession by the Government to the date of payment. The interest of Rs. 20,742 was assessed in the assessment year 1965-66 as the award was given in the month of March, 1965.

11. Not being satisfied with the extent of compensation awarded by the Land Acquisition Officer, references were filed by the applicants in the City Civil Court under Section 18 of the Land Acquisition Act. These references were numbered as O.P. No. 325 of 1965 and O.P. No. 364 of 1965 in the Court of the Second Additional Judge, City Civil Court, Hyderabad. By Order dated October 30, 1967, the City Civil Court enhanced the compensation to Rs. 6,000 per acre and also directed payment of solatium at 15% on the enhanced compensation besides interest from the date of possession to the date of payment. Aggrieved by the enhancement directed by the City Civil Court, the Government filed appeals bearing C.C.C.A. Nos. 135 of 1965 and 136 of 1965 to the High Court. Cross appeals were also filed by the applicants claiming that the enhancement directed by the City Civil Court was not adequate. These cross appeals were numbered as C.C.A. Nos. 123 of 1968 and 157 of 1968. While the above appeals were pending in the High Court, the Government paid the enhanced compensation to the applicants as per the order of the City Civil Court. The amount paid was Rs. 25,48,960 which included interest of Rs. 5,05,870. It was received by the applicants on April 25, 1970.

12. On the ground that the interest payable on the enhanced compensation accrued or arose to the applicants on October 30, 1967, which fell in the accounting year corresponding to the assessment year 1968-69, the Income-tax Officer included the respective shares of the applicants out of the aforesaid interest in their individual assessments for the assessment year 1968-69. The interest so assessed in each case was as follows:

Rs. Mrs. F.R. Chenai 2,81,036 Mrs. K.S. Chenai 1,12,417 Master Daraius S. Chena i 1,12,417

12. The applicants contended that the interest was allocable to and assessable in different assessment years as it accrued from year to year from the date of taking possession of the lands by the Government and, therefore, only that portion of the interest relating to the period April 1, 1967, to March 31, 1968, was assessable for the assessment year 1968-69 in each case. The Income-tax Officer rejected the contention following the decision of the Andhra Pradesh High Court in CIT v. Sankari Manickyamma .

13. The applicants appealed to the Appellate Assistant Commissioner against the orders of the Income-tax Officer. The Appellate Assistant Commissioner upheld the Income-tax Officer's view that interest commencing from the date of possession till October 30, 1967, must be considered to have accrued to the applicants on the date when the City Civil Court gave its order and that, in that view, the interest from the date of possession up to March 31, 1968, was liable to be assessed in the assessment for the year 1968-69. The aggregate of the interest from the date of possession till March 31, 1968, was ascertained as Rs. 3,42,424 and the respective shares of the applicants were as follows:

Rs. Mrs. F.R. Chenai 1,90,234 Mrs. K.S. Chenai 76,095 Master D.S. Chenai 76,095

14. The Appellate Assistant Commissioner held that the above sums only should be assessed in the hands of the applicants for the assessment year 1968-69.

15. The Department accepted the orders of the Appellate Assistant Commissioner. The applicants filed further appeals to the Tribunal against his decision. The applicants reiterated before the Tribunal the contention raised before the lower authorities. Counsel appearing on their behalf strongly relied on the following decisions of the High Courts:

- (i) Commissioner of Income-tax v. Dr. Sham Lal Narula (P & H) ;
- (ii) T.N.K. Govindarajulu Chetty v. Commissioner of Income- tax (Mad) ;
- (iii) Joyanarayan Panigrahi v. Commissioner of Income-tax (Orissa) ; and
- (iv) Commissioner of Income-tax v. Sampangiramaiah (Mysore).

16. The Tribunal, however, felt bound by the Andhra Pradesh High Court decision in Sankari Manikyamma's case , and, accordingly, upheld the orders of the Appellate Assistant Commissioner.

17. On the above facts, we are of the opinion that the following question of law arises out of the order of the Tribunal, viz.:

Whether, on the facts and in the circumstances of the case, the interest received by the assessee as per the, City Civil Court's award for the period commencing from the date of possession till March 31, 1968, was entirely assessable for the assessment year 1968-69 ?

18. Since there is a conflict of views among the different High Courts in the matter, we think it is expedient to refer the above question of law direct to the Honourable Supreme Court of India as per the provisions of Section 257 of the Income-tax Act, 1961. We may mention that, on the same issue, a direct reference to the Supreme Court is being made in R. A. No. 259/Hyd of 1974-75, but since the question arises quite often and the revenue effect involved in these three cases is quite substantial, we thought it proper to make a direct reference in these cases also to the Honourable Supreme Court.

19. G.C. Sharma and T.A. Ramachandran, Senior Advocates (A. Subba Rao and A.D.N. Rao, Advocates, with them), for the applicant in T.R. C. No. 3 of 1976.

20. G.C. Sharma, Senior Advocate (A. Subba Rao, Pradeep Agarwal, Rajiv Tyagi, Vikram Dholakia and A.D.N. Rao, Advocates, with him), for the applicants in T.R.C. No. 1 to 3 of 1978.

21. T.A. Ramachandran, Senior Advocate (B. Parthasarathi, Advocate, with him), for the appellant and the interveners in C.A. No. 810 of 1974.

22. A. Subba Rao and A.D.N. Rao, Advocates, for the appellant in C.A. No. 3027 of 1988.

23. Dr. V. Gauri Shankar, Senior Advocate (B.B. Ahuja and Miss A. Subhashini, Advocates, with him), for the respondents in all the references and appeals.

#### ORDER

24. Tax Ref. Case No. 3 of 1976, Tax Ref. Cases Nos. 1 to 3 of 1978, C. A. No. 810 of 1974, Civil Appeal No. 3027 of 1988:-The question involved in these cases is regarding the point of time at which the interest payable under Sections 28 and 34 of the Land Acquisition Act, 1894 (I of 1894), accrues or arises, where such interest is paid on enhanced compensation awarded on a reference under Section 18 of the said Act or further appeal to the High Court and/or the Supreme Court. Some of the matters before us are appeals and some are references under Section 257 of the Income-tax Act, 1961. These references were made directly to this Court in view of the fact that there was a conflict of decisions among the High Courts on the above issue. We do not think it is necessary to refer to those decisions because we find that the question at issue is now concluded by the decision of this Court in Commissioner of Income-tax v. Govindarajulu Chetty (T.N.K.) . Though the judgment is a short one, it deals directly with the point in issue. It is also clear from a perusal of the judgment of the High Court in T.N.K. Govindarajulu Chetty v. CIT (Mad), which was upheld by the Supreme Court in this matter, that the issue has been considered by this Court in all its aspects. The principle of the decision also derives support from the earlier decision of this Court in Khorshed Shapoor Chenai v. Asst. CED . In these circumstances, we are of the opinion that the appeals before us (Civil Appeal No. 810 of 1974 and Civil Appeal No. 3027 of 1988) have to be allowed and the references made under Section 257 (Tax Reference Cases Nos. 3 of 1976 and 1 to 3 of 1978) have to be answered by saying that the question of accrual of interest will have to be determined in accordance with the above decision of this Court. The effect of the decision, we may clarify, is that the interest cannot be taken to have accrued on the date of the order of the court granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession of the lands till the date of such order.

25. These matters are-disposed of accordingly. There will be no order as to costs.

26. Civil Miscellaneous Petitions Nos. 14921-25 of 1978 in C.A. No. 810 of 1974: The petitions have already been allowed and we have also heard Sri T. A. Ramachandran, Senior Advocate, appearing for them. No further orders are necessary on these petitions.

27. Civil Miscellaneous Petition No. 11123 of 1973 in C. A. No. 810 of 1974: We have been informed that the vakalatnama has since been filed. No further order is necessary on this petition.

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