Commissioner of Income Tax

Vs

All India Tea and Trading Co. Ltd

Civil Appeal No. 2136 of 1979

(J. S.Vermar, B. N. Kirpal JJ)

01.03.1996

JUDGMENT

B. N. KIRPAL, J. -

1. The only question for consideration in this appeal is whether the compensation received by the respondent, on its agricultural land being requisitioned, was exempt from the levy of income tax or not.

2. The respondent is a company having tea estates in Assam. In order to accommodate refugees and other landless persons, the Assam Legislature passed the Assam Land (Requisition and Acquisition) Act, 1948 (25 of 1948) (hereinafter referred to as 'the Act'). Section 3 of this Act provided for requisitioning of land and according to Section 4 the requisitioned land could be used or dealt with in such manner as may seem expedient to the State Government. The land could also be acquired by the State Government after necessary notice. Section 7 of the Act sets out the principles of determining compensation for acquisition/or requisition of land. Sub-section (3) of Section 7 provides that where any land is requisitioned then every person interested in such land is to be paid such compensation as may be agreed upon in writing between the person interested and the Collector. Compensation is also payable in respect of any damage which may be done to the land during the period of requisition. The maximum amount of compensation which may be payable is also stipulated.

3. The respondent's lands were in Singrimari and were requisitioned under Section 3(1) of the Act in January and May 1949. The respondent got Rs 1,24,638 as compensation.

4. The claim of the respondent during the Assessment Year 1958-59, with which we are concerned in this appeal, was that the amount of compensation received was exempt from levy of income tax as this amount represented the respondent's agricultural income. The Income Tax Officer did not accept this claim. On appeal, however, the Appellate Assistant Commissioner found that the respondent was using the requisitioned land for agricultural purposes at the time of requisition and also earlier to that. He, therefore, held that the compensation received by the respondent was its agricultural income and, therefore, not liable to tax. The department then filed an appeal before the Tribunal, but without success. Upholding the order of the Appellate Assistant Commissioner, the Tribunal found as a fact that after requisition the Government of Assam had given that land to refugees who continued to cultivate the same. In other words, the finding of fact of the Tribunal was that the land in question was being used by the respondent for agricultural purposes in the relevant accounting year, and also in the earlier years, and the said land even after requisition, was being cultivated by the refugees. Therefore, the agricultural character of the land did not undergo any

change.

5. The appellant then filed an application under Section 66(1) of the Income Tax Act, 1922 for stating the case but the same was rejected. Its application under Section 66(2) of the Income Tax Act, 1922 was allowed and the Tribunal, thereupon stated the case and referred the following question of law to the High Court :

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs 1,24,638 was exempt from tax."

6. The High Court answered the aforesaid question of law in favour of the respondent and came to the conclusion that the source of compensation was the land itself and though the paument was discharged of the statutory liability, nonetheless, it was the liability which arose directly from the requisition of the agricultural land. It concluded that the amount of compensation paid under the Act was aricultural income and, therefore, exempt from tax.

7. The High Court, therefore, granted leave, hence this appeal.

8. It has been contended by the learned counsel for the appellant that the compensation paid for requisitioning of the agricultural land was not agricultural income and the same was liable to tax.

9. In support of this contention, the learned counsel relied upon the decision of the Andhra Pradesh High Court in the case of Pydah Suryanarayana Murty v. CIT ((1961) 42 ITR 83 (AP)). Our attention was also drawn to the decision of the Assam High Court in the case of Senairam Doongarmall v. State of Assam (AIR 1953 Ass 65 : ILR (1953) 5 Ass 55), which was a case arising under the Assam Agricultural Income Tax Act, 1939 (9 of 1939) and it was held therein that the compensation received on the requisitioning of the factory and some other buildings of a tea estate did not represent agricultural income.

10. In our opinion the decision of the High Court calls for no interference. Agricultural income is defined under Section 2(1) of the Income Tax Act, 1922 and the relevant portion thereof is as follows :

> "'agricultural income' means -
>
> (a) Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such."

11. The finding of fact in the present case is that even after the requisition of the land, the refugees were carrying our agricultural operations on the land in question. Therefore, one of the requirements of Section 2(1) of the Income Tax Act, 1922, namely, that the land is used for agricultural purposes stands satisfied. The only question which has been considered is whether the amount of compensation which was received can be regarded as rent or revenue which can be said to be derived from land. In our opinion, the answer to the said question is obvious. The land in question continued to vest with the respondent during the relevant assessment year. On the requisitioning of the land, possession of the same was taken and the refugees were put in possession for which compensation was paid to the respondent. In a sense the refugees became statutory or compulsory tenants and for parting with the physical possession of the land, on which agricultural operations continued to be carried on, compensation was paid. This compensation clearly had the character of

rent or in any case, has to be regarded as being revenue which was derived from the land. If the respondent had voluntarily given the land on lease and had received the sum of Rs 1,24,638 as rent, the same would not have been taxable as it would admittedly be agricultural income. What happened in this case was that instead of voluntarily giving this land on rent to the refugees the said land has been given to them by the order of requisition being passed by the State of Assam. The amount received is directly related to the requisitioned land on which agricultural operations continued to be carried on by the refugees during the year in question and this amount has to be regarded as agricultural income as defined by Section 2(1) of the Income Tax Act, 1922.

12. The decision in Suryanarayana Murty case ((1961) 42 ITR 83 (AP)) distinguishable because in that case the facts were that the agricultural land was requisitioned for military purposes under the Defence of India Act, 1939 and compensation was paid in respect thereof. It was held that as the military authorities had not carried on agricultural operations on the lands, the compensation received by the assessee was not agricultural income. In the present case, however, the finding of fact is that the refugees, to whom the lands were allotted did carry out agricultural operations. Therefore, the compensation has to be regarded as agricultural income. In Senairam Doongarmall v. CIT ((1961) 42 ITR 392 : AIR 1961 SC 1579 : (1962) 1 SCR 257) buildings had been requisitioned for defence purposes and the manufacture of tea had stopped. The question arose as to whether the compensation received for the requisitioning of the building was taxable as income. This Court came to the conclusion that the assessee did not carry on any business after the requisition of its factory and other buildings and, therefore, the amount received could not be regarded as profits and gains of business taxable under Section 10 of the Income Tax Act. This decision can be of no assistance to the appellant because in the present case the respondent continued its business activities. Further, whereas in Senairam Doongarmall case ((1961) 42 ITR 392 : AIR 1961 SC 1579 : (1962) 1 SCR 257) what was requisitioned was factory and buildings, in the present case, however, it is agricultural land which was requisitioned.

13. The other decision relied upon by the learned counsel for the appellant, namely, Member, Board of Agricultural Income Tax v. Sindhurani Chaudhurani (AIR 1957 SC 729 : 1957 SCR 1019 : (1957) 32 ITR 169) has also no bearing on the point in issue because in that case the question which arose for was whether the 'salami' paid by the tenant to the landlord could be regarded as agricultural income or not. It was held that the 'salami' was neither rent nor revenue. But in the present case we are not concerned with the payment of 'salami'. This case relates to payment of compensation for the requisition of land which is very different from payment of 'salami' by a tenant. The decision of the Assam High Court in Senairam Doongarmall case (AIR 1953 Ass 65 : ILR (1953) 5 Ass 55), which related to the Assam Agricultural Income Tax Act, is again not relevant because that case related to requisition of factory and buildings of the assessee and not of any agricultural land.

14. Before concluding we may note that the respondent's land which was requisitioned was subsequently acquired by the State of Assam and compensation was paid. In CIT v. All India Tea and Trading Co. Ltd. ((1979) 117 ITR 525 (Cal)) it was held that as the land in question was agricultural land which was being used for agricultural purposes, even after its being requisitioned, the amount of compensation paid on its acquisition was not taxable under the head "capital gains" as the said land was not a capital asset. It is clear, therefore, that at no point of time or at least till its acquisition the land lost its character of agricultural land. Therefore, compensation paid for the use by the refugees of the said land for agricultural purposes can only be regarded as agricultural income which admittedly is not taxable.

15. For the aforesaid reasons, the decision of the High Court is affirmed and the appeal is dismissed with costs.