

# **SUPREME COURT OF INDIA**

Commr. of Income Tax

Vs.

Govindbhai Mamaiya

C.A.Nos.8103, 8104, 8105, 8106, 8107, 8108, 8109 and 8110 of 2009

(Jasti Chelameswar and Arjan Kumar Sikri JJ.)

04.09.2014

## **JUDGMENT**

### **ARJAN KUMAR SIKRI, J.**

1. The question of law that arises for consideration in all these appeals which are filed by the Commissioner of Income Tax, Rajkot (hereinafter referred to as the 'Revenue') is common. The Respondents in all these appeals are also common. The three Respondents (hereinafter referred to as the 'Assessee') are brothers. The issue raised is identical in all these appeals which pertains to different assessment years and that is the reason that there are eight appeals before us. For the sake of convenience, we will refer to the facts emerging from the records of Civil appeal No. 8103 of 2009.

2. The Respondents are three brothers. Their father died leaving the land admeasuring 17 acres and 11 gunthas to the three brothers and two other persons who relinquished their rights in favour of the three brothers. A part of this bequeathed land was acquired by the State Government and compensation was paid for it. On appeal, the compensation amount was enhanced and additional compensation alongwith interest was awarded.

3. The Respondents filed their return of income for each assessment years claiming the status of 'individual'. Two questions arose for consideration before the Assessing Officer. One was as to whether these three brothers could file separate returns claiming the status of the ' individual' or they were to be treated as 'Association of Persons' (AoP). Second question was regarding the taxability of

the interest on enhanced compensation and this interest which was received in a particular year was to be assessed in the year of receipt or it could be spread over the period of time.

4. Without going into the detail as to how this question traversed and decided by one forum to other, suffice it is to state that the Assessing Officer had passed the assessment order by treating their status as that of a AoP. The Assessing Officer had also refused to spread the interest income over the years and treated it as taxable in the year of receipt. Ultimately, the High Court has decided that these persons are to be given the status of 'individual' and assessed accordingly and not as AoP and that the interest income is to be spread over from the year of dispossession of land, that is the assessment year 1987-88 till the year of actual payment which was received in the assessment year 1999-2000 applying the principles of accrual of income. It is in this backdrop that the Revenue has approached this Court challenging the decision of the High Court.

5. Insofar as the treatment of the Respondents giving the status of 'individual' and assessing on that basis is concerned, the issue is no more res integra. Learned Counsel for the Revenue candidly and fairly conceded that this aspect stands conclusively determined by various judgments. It would be suffice to refer to the judgment of this Court in *Meera and Co. Ludhiana v. Commissioner of Income Tax, Punjab, J and K and Chandigarh, Patiala* reported in MANU/SC/0471/1997 : (1997) 4 SCC 677. After taking note of some previous judgments on this issue, the Court summed up the legal position in paras 19 and 20 which are reproduced below:

19. In the case of *CIT v. Indira Balkrishna* MANU/SC/0151/1960 : AIR 1960 SC 1172, this Court held that "association of persons" meant an association in which two or more persons joined in a common purpose or common action. As the words occurred in a section which imposed a tax on income, the association must be one the object of which was to produce income, profits or gains. In that case, the co-widows of a Hindu governed by Mitakshara law inherited his estate which consisted of immovable properties, shares, money lying in deposit and a share in a registered firm. The Appellate Tribunal found that they had not exercised their right to

separate enjoyment and that except for jointly receiving the dividends from the shares and the interest from the deposits, they had done no act which had helped to produce income. This Court held that the co-widows succeeded as co-heirs to the estate of the deceased husband. It was held that since the widows had an equal share in the income from immovable properties, Section 9(3) of the Indian Income Tax Act, 1922 will apply. So far as other incomes were concerned, it was held:

Coming back to the facts found by the Tribunal, there is no finding that the three widows have combined in a joint enterprise to produce income. The only finding is that they have not exercised their right to separate enjoyment, and except for receiving the dividends and interest jointly, it has been found that they have done no act which has helped to produce income in respect of the shares and deposits. On these findings it cannot be held that the three widows had the status of an association of persons within the meaning of Section 3 of the Indian Income Tax Act.

20. The meaning of "an association of persons" was also examined by this Court in the case of *G. Murugesan and Brothers v. CIT* MANU/SC/0227/1973 : (1973) 4 SCC 211. It was held in that case that an association of persons could be formed only when two or more individuals voluntarily combined together for certain purposes. Volition on the part of the members of the association was an essential ingredient. It was further held that even a minor could join "an association of persons" if his lawful guardian gave his consent. The income in that case arose under two heads-house property and dividends from shares. The question before this Court was whether the dividend income should be assessed in the hand of an association of persons or individuals. One Sinnamani Nadar executed a settlement deed in favour of his four grandsons. The property covered by the settlement deed comprised of a house property which had been let out and some shares. The donees were to enjoy the income of these properties during their lifetime. Thereafter, the properties were to devolve on their children. In that case, it was pointed out that Income Tax return was filed in the status of association of persons prior to the assessment year 1959-60 to

1962-63, the returns were submitted as individuals specifically stating that the donees were not functioning as an association of persons.

6. In the present case, the admitted facts are that the property in question which was acquired by the Government, came to the Respondents on inheritance from their father i.e. by the operation of law. Furthermore, even the income which is earned in the form of interest is not because of any business venture of the three Assesseees but it is the result of the act of the Government in compulsorily acquiring the said land. In these circumstances, the case is squarely covered by the ratio of the judgment laid down in *Meera & Company (supra)* inasmuch as it is not a case where any "Association of Persons" was formed by volition of the parties for the purpose of generation of income. This basic test to determine the status of AoP is absent in the present case.

7. Insofar as the second question is concerned, that is also covered by another judgment of this Court in *Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF)* reported in MANU/SC/1208/2009 : (2009) 8 SCC 412, albeit, in favour of the Revenue. In that case, the court drew distinction between the "interest" earned Under Section 28 of the Land Acquisition Act and the "interest" which is Under Section 34 of the said Act. The Court clarified that whereas compensation given to the Assessee of the land acquired would be 'income', the enhanced compensation/consideration becomes income by virtue of Section 45(5)(b) of the Income Tax Act. The question was whether it will cover "interest" and if so, what would be the year of taxability. The position in this respect is explained in paras 49 and 50 of the judgment which make the following reading:

49. As discussed hereinabove, Section 23(1-A) provides for additional amount. It takes care of the increase in the value at the rate of 12% per annum. Similarly, Under Section 23(2) of the 1894 Act there is a provision for solatium which also represents part of the enhanced compensation. Similarly, Section 28 empowers the court in its discretion to award interest on the excess amount of compensation over and above what is awarded by the Collector. It includes additional amount Under Section 23(1-A) and solatium Under Section 23(2) of the said Act. Section 28 of the 1894 Act applies only in respect of the excess amount determined by the court after

reference Under Section 18 of the 1894 Act. It depends upon the claim, unlike interest Under Section 34 which depends on undue delay in making the award.

50. It is true that "interest" is not compensation. It is equally true that Section 45(5) of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest Under Section 28 unlike interest Under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest Under Section 34 of the 1894 Act. So also additional amount Under Section 23(1-A) and solatium Under Section 23(2) of the 1961 Act forms part of enhanced compensation Under Section 45(5)(b) of the 1961 Act.

8. It is clear from the above that whereas interest Under Section 34 is not treated as a part of income subject to tax, the interest earned Under Section 28, which is on enhanced compensation, is treated as a accretion to the value and therefore, part of the enhanced compensation or consideration making it exigible to tax. After holding that interest on enhanced compensation Under Section 28 of 1894 Act is taxable, the Court dealt with the other aspect namely, the year of tax and answered this question by holding that it has to be tested on receipt basis, which means it would be taxed in the year in which it is received. It would mean that converse position i.e. spread over of this interest on accrual basis is not permissible. Here again, we would like to reproduce the discussion contained in paras 53 and 54 which gives the rational in coming to the said conclusion. Paras 53 and 54 read as under:

53. The scheme of Section 45(5) of the 1961 Act was inserted w.e.f. 1-4-1988 as an overriding provision. As stated above, compensation under the L.A. Act, 1894, arises and is payable in multiple stages which does not happen in cases of transfers by sale, etc. Hence, the legislature had to step in and say that as and when the Assessee claimant is in receipt of enhanced compensation it shall be treated as "deemed income" and taxed on receipt basis. Our above understanding is supported by insertion of Clause (c) in

Section 45(5) w.e.f. 1-4-2004 and Section 155(16) which refers to a situation of a subsequent reduction by the court, tribunal or other authority and recomputation/amendment of the assessment order.

54. Section 45(5) read as a whole [including Clause (c)] not only deals with reworking as urged on behalf of the Assessee but also with the change in the full value of the consideration (computation) and since the enhanced compensation/consideration (including interest Under Section 28 of the 1894 Act) becomes payable/paid under the 1894 Act at different stages, the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, Under Section 155(16) of the 1961 Act, later on. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the court/tribunal/authority before which appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed Under Section 45(5) of the 1961 Act. This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act. We may clarify that even before the insertion of Section 45(5)(c) and Section 155(16) w.e.f. 1-4-2004, the receipt of enhanced compensation Under Section 45(5)(b) was taxable in the year of receipt which is only reinforced by insertion of Clause (c) because the right to receive payment under the 1894 Act is not in doubt.

9. In view of the above discussion, we allow these appeals in part and set aside that portion of the impugned judgment of the High Court whereby spread over of the interest received Under Section 28 of the 1894 Act, on the enhanced income is allowed with the direction that it would be taxed in the year in which such interest on enhanced compensation was received.