KERALA HIGH COURT

Jairam

Vs

Commissioner of Income-tax

I.T.R. 28 and 29 of 1977

(Gopalan Nambiyar, C.J. and Balagangadharan Nair, J.)

06.02.1979

JUDGMENT

Gopalan Nambiyar, C.J.

1. These references had been compelled by this court under Section 256(2) of the I.T. Act and the Income-tax Appellate Tribunal, Cochin Bench, was directed to refer the following questions of law for our determination, viz:

> "1. Was the Appellate Tribunal justified in holding that the assessee has maintained no books of account and, therefore, the question of adopting the mercantile method of accounting does not arise ? Is the said finding based on any material or warranted on the facts of the instant case ?
> 2. Is the finding of the Appellate Tribunal to the effect, that 'the interest accrues due to the assessee on the date of award or decree of court and, therefore, it becomes income of the assessee only on that date and not prior to it' justified in law ?
> 3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law, in including the entire amount of Rs. 10,322 interest for the period from 1962 to 1969, in the total income of the assessee, for the assessment year 1970-71 ?"

2. The assessee, an "individual" was the owner of certain lands in Erna-kulam, the extent and the location of which do not appear from the record. The lands were acquired in 1962 by the State Government for the purpose of the Cochin Ship Building Yard. Compensation was awarded by the Land Acquisition Officer. The assessee disputed the adequacy of compensation and had the matter referred to the Sub-Judge, Ernakulam. By a decree dated May 29, 1969, the sub-judge awarded additional compensation of Rs. 25,806 with interest at the rate of 6% from the date of dispossession, which was on May 11, 1962. In the course of the accounting year 1969-70 (assessment year 1970-71) the assessee received a sum of Rs. 10,322 as interest on the additional compensation awarded. These are the facts in I.T.R. No. 29 of 1977 which was treated as the main case.

3. The facts are similar in I.T.R. No. 28 of 1977 which relates to a different assessee for the same assessment year 1970-71. Enhanced compensation of Rs, 41,787 was decreed by the sub-judge on May 29/1969, together with interest at 6% from the date of dispossession, i.e., May 11, 1962. The interest received by the assessee was Rs. 16,705, This was appropriated out of deposit made by the Government in court on January 20, 1969.

4. According to the assessees in both these references, only a proportionate amount of the interest referable to the accounting year, and not the entire interest, was assessable during the year concerned. This amount, according to them, was Rs. 662 in T.R.C. No. 29 of 1977, and Rs. 1,072 in T.RC. No. 28 of 1977. Thus, the question in both the references is whether the entirety of the interest on the enhanced compensation decreed by the court during the assessment year in question should be brought into the tax net during the year itself, or had to be spread over during the period from the date of dispossession to the date of the decree. The revenue would contend for the former position, and the assessee, for the latter.

5. Section 5(1) of the I.T. Act, in so far as it is material, reads :

> "5. Scope of total income.--(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which--
> (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
> (b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or
> (c) accrues or arises to him outside India during such year."

(The proviso and the rest of the Section omitted as unnecessary.) The question is as to when the income by way of interest on the additional compensation "accrues or arises to the assessee, or is deemed to accrue or arise" to him. We may refer to the relevant provisions of the Land Acquisition Act. (Reference is to the Central Land Acquisition Act, 1894 ; the provisions of the Kerala Act are similar). Section 11 of the Act provides for passing of an award by the Collector determining, inter alia, the compensation which in his opinion should be allowed for the land. Section 31 of the Act provides that, on making an award, the Collector shall tender payment of the compensation to the persons interested and shall pay it to them. Under section 34 when the amount of such compensation is not paid of deposited before taking possession of the land the Collector shall pay the amount awarded with interest at the rate of 6% per annum from the time of taking possession, till date of payment or deposit. Under section 18 of the Land Acquisition Act, a person who has not accepted the award has a right to require the Collector to refer the matter for the determination of the court. The court, in the light of the principles indicated in Sections 23, 24 and 25, is to make an award showing the amount of compensation determined by it and the other particulars specified in Section 26. Under Section 28 of the Act, the court is empowered to award interest on the excess amount of compensation at 6% from the date of dispossession till the date of payment of the excess amount in the court. The question involved in these references is with respect to the interest awarded by the court under Section 28 of the Land Acquisition Act (Section 30 of the Kerala Act). It will be noted that while under Section 34, the liability to pay interest is obligatory, the same is only discretionary under Section 28 of the Act.

Also, it is only if the claimant invokes a reference to the court, and the court is satisfied about the conditions mentioned in Section 28, that it is given the discretion of awarding interest on the excess amount. In the light of these statutory provisions, the question falls to be considered is as to when the income--interest--can be said to "accrue "within the meaning of Section 4 of the Act. That expression is not defined by the Act; and its meaning and content must be judged in the dictionary sense and according to the judicial acceptation of the term. In *E.D. Sassoon & Company Ltd. v. Commissioner of Income Tax*[1], the S. company (the E. D. Sassoon & Company Ltd.) were the managing agents of the U. company. It was entitled to receive as remuneration a commission of certain per cent. per annum on the annual net profits of the U. company, which was due to them on 31st March, of every year. On 1st December, 1943, the S. company assigned to A their office as managing agents and all their rights and benefits under the managing agency agreement and the consideration received by them was transferred by them to the capital reserve account. The accounts of the managing agency commission payable to the managing agents for the calendar year 1943 were made up in 1944 and paid to A in 1944. The question was whether in the assessment year 1944-45, A was liable to pay tax on accrual basis on the whole of the commission or whether the tax was payable by A and the S. company on proper apportionment being made between them of the amount received by A. The majority judgment held that A was liable to pay tax on the whole commission and that the commission was not liable to be apportioned between S and A in proportion to the service rendered by each of them, as managing agents. In discussing the question, the court examined as to when income can be said to have accrued as used in the I.T. Act. The court observed (p. 49): "Neither the word 'income' nor the words 'is received', 'accrues' and 'arises' have been defined in the Act." The court then noticed that Mukherji J. in the decision in *Rogers Pyatt Shellac & Co. v. Secretary of State for India*[2], had defined these terms. According to the learned judge, "accruing" is synonymous with "arising" in the sense of springing as a natural growth or result. The learned judge further observed (p. 50):

> "It is clear, however, as pointed out by Fry L.J. in *Colquhoun v. Brooks*[3], (this part of the decision not having been affected by the reversal of the decision by the House of Lords [1889] 14 App Cas 493 that both the words are used in contradistinction to the word 'receive' and indicate a right to receive. They represent a state anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate." (p. 50)

Having extracted the above quotation, the Supreme Court pointed out that to the same effect were the observations of Justice *Satyanarayana Rao in Commissioner of Income Tax v. Anamallais Timber Trust Ltd*[4]., and of Mukherjee J. in *C.I.T., Bombay v. Ahmedbhai Umarbhai & Co*[5]., In the light of, the above discussion, the Supreme Court summarised the position thus (p. 51):

[1](1954) 26 ITR 27 (SC)
[2](1925) 1 ITC 363 (Cal) (FB)
[3](1888) 21 QBD 52 at 59 (CA)
[4](1950) 18 ITR 333 at 342 (Mad)
[5](1950) 18 ITR 472 (SC)

> "It is clear, therefore, that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in

> praesenti, solvendum in futuro; See *W.S. Try Ltd. v. Johnson (Inspector of Taxes[6]),* and *Webb v. Stenton[7],* Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him." (p. 51)

Lower down, it was stated :

> "But in order that the income can be said to have accrued to or earned by the assessee it is not only necessary, that the assessee must have contributed to its accruing or arising by rendering services or otherwise but he must have created a debt in his favor. A debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective in bringing into existence a debt or a right to receive the payment or in other words a debitum in praesenti, solvendum in futuro it cannot be said that any income has accrued to him."

6. For the assessee it is argued that the excess compensation with the interest thereon is in lieu of the dispossession of the property, and, therefore, the right accrued from the date of dispossession. For the revenue, on the other hand, the contention is that, for acquisition, provisions for payment of compensation and for award of interest are made in Sections 11 and 34 which we have noticed. The question of excess compensation can arise only if proceedings by way of reference are pursued; and even the right to an award of interest on excess compensation under Section 28 is discretionary in the court. This being the position, counsel for the revenue argued that the right to interest on excess compensation does not "accrue" or arise on the date of dispossession. We may examine the decisions cited on either side.

7. Counsel for the assessee relied strongly on the decision of the Madras High Court in *T.N.K. Govindarajulu Chetty v. Commissioner of Income Tax[8],* The assessee-firm had purchased a property known as "Lutterals Gardens" on April 2, 1943. That was requisitioned by the Government of India in January, 1944, under the Defence of India Act and ultimately acquired by the Government of Madras under the Requisitioned Land (Continuance of Powers) Act, 1947. The compensation payable was fixed at Rs. 2,40,000. Dissatisfied with the amount, the assessee sought a reference to the arbitrator, the Chief Judge of the Court of Small Causes, Madras, who fixed the compensation at Rs. 3,67,666 with interest at 6% per annum from 24th May, 1949 (the date of the notification for acquisition). Against the award of the arbitrator, the assessee filed an appeal to the High Court. It resulted in the further enhancement of compensation to Rs. 5,00,000. On this basis, a total sum of Rs. 6,28,716 was paid to the assessee, of which Rs. 2,54,885 was paid in the accounting year ended 13th

[6](1946) 1 All ER 532, 539 (CA)

[7](1883) 11 QBD 517 at 522, 527 (CA)

[8](1973) 87 1TR 22

April, 1955, and the balance of Rs. 3,73,831 was paid during the year ended 12th April, 1956. In the assessment of the firm for the years 1955-56 and 1956-57, the ITO took the view that Rs. 1,28,716, included in the total compensation, represented the interest, and as such had to be treated as income. This was apportioned in the two years in proportion to the total receipts, as Rs. 50,592 for 1955-56 and Rs. 78,124 for the year 1956-57. The assessee's contention was that the entire amount represented compensation, and, as such, was a capital receipt and no part of it was

liable for assessment as income. Alternatively, it was contended that the amount had to be apportioned and assessed in the respective years to the extent to which interest was relatable. The AAC rejected the main contention as to capital receipt, but accepted the alternative contention. Against the rejection of the main contention the assessee appealed to the Tribunal. The revenue also appealed, objecting to the apportionment of the interest. The Tribunal accepted the main contention of the assessee, and held that the amount was capital receipt and was not liable to tax. It did not consider the alternative contention. On a reference, the matter came up before the High Court. The High Court held that the amounts represented interest on the debt due by the Government and was, therefore, taxable as income [vide 52 ITR 867 (Mad)]. It left the question of apportionment to be. gone into afresh. The assessee took the matter to the Supreme Court. The Supreme Court in *T.N.K. Govindarajulu Chetty v. Commissioner of Income Tax*[9], upheld the decision of the Madras High Court that interest received was income, and was taxable. The next stage was regarding the apportionment of interest. The Tribunal held that the income need not be apportioned and assessed in the respective years and confirmed the pro rata allocation made by the ITO. The assessee appealed on the ground that only the portion relatable to interest during the respective years could be assessed to tax. It was this question that fell to be considered in [1973] 87 ITR 22 (Mad). Dealing with that question the Madras High Court examined the system of accounting. It referred to *Thiagamja Chetty's case*[10], where the Supreme Court had stated that it was a fallacy to say that profits did not accrue until they are actually computed, and that computation of profits cannot possibly suspend their accrual, and quantification is not a condition precedent to the accrual of the right to income. Reference was made to *Sassoon & Co.'s case*[11], which had restated the same principle. In the light of the above principles, the Madras High Court observed (p. 27):

> "In this case the assessee has acquired a right in praesenti against the Government to get the compensation for the land acquired even on the date of the notification, and to get interest on the amount of compensation if payment of the same is postponed for some reason or other. From the mere fact that the amount of compensation was fixed ultimately by this court, it cannot be said that the liability to pay either the compensation or the interest thereon arose only on the date of such fixation."

The decision seems to take the view that the right to interest arises, and income by way of interest accrues, on the date of the notification for acquisition. The decision of the Mysore High Court in *Commissioner of Income Tax v. Sampangiramaiah*[12], was referred to and followed. The court ultimately concluded that the entire amount of

[9](1967) 66 ITR 465
[10](1953) 24 ITR 525
[11](1954) 26 ITR 27 (SC)
[12](1968) 69 ITR 159

interest cannot be taxed as income in the two assessment years on the basis of receipt and that the income had to be spread over the respective years to the extent to which they should be deemed to have accrued in those years. The Mysore case referred to by the Madras High Court is *Commissioner of Income Tax v. Sampangiramaiah*[13], The land of 20,000 square yards was acquired under a notification on June 13, 1948 ; the award at Rs. 2 a square yard was on June 2, 1949. Rs. 46,000 (inclusive of solatium) was paid to the assessee on December 31, 1949; the District Judge enhanced the compensation under Section 18 to Rs. 5 a square yard; the High Court further enhanced it to Rs. 7 a square yard, which the Supreme Court sustained by a decree dated March 7, 1961. Rs. 2,02,265 was payable to the assessee which included Rs. 87,266 as

interest from the date of dispossession, i.e., February 19, 1949, till payment on October 1,2, 1961. The question that arose before the Mysore High Court was whether the entire interest was assessable in 1962-63 or only a proportionate interest referable to the assessment year. The argument advanced for the assessee is thus noticed (p. 162):

> "It was suggested to us by Mr. Swaminathan for the assessee that the right to the whole of the compensation and. interest which eventually becomes payable is born when an acquisition starts, and, in any event, when possession is taken, and dependence was placed on the statement of the law by the Supreme Court in *Commissioner of Income-tax v. K.R.M.T.T. Thiagaraja Chetty & Company*[14], and *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax*[15], that the accrual of income which has become due does not wait until its quantification."

The argument was answered thus (p. 163):

> "Now, when possession was taken by the Land Acquisition Officer, he became liable to pay interest until the amount awarded by him was paid, and the assessee acquired the right to recover it from him. The direction of the District Judge for the payment of interest on the enhanced compensation, which, his decree made on February 28, 1951, incorporated, produced the fight to recover such interest at least on the date of that decree. Then again, when compensation was further enhanced by the former High Court of Mysore which made a similar direction for the payment of interest on such enhanced compensation, all that interest which that amount so earned from February 19, 1949, became immediately due and payable under an executable decree.
>
> It is difficult to understand how the pendency of the appeal before the Supreme Court could arrest the accrual of that income. It did not. It is admitted that during the pendency of the appeals before the Supreme Court, there was no stay of execution. Even if there was, its impact on accrual is debatable.
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> So, the premise that the right to no part of the interest was born until the Land Acquisition Officer made his arithmetic after the Supreme Court disposed of the appeals, cannot have the support of reason.
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> There was thus a complete acquisition of the right to recover the accumulated interest on the amount awarded by the Land Acquisition Officer when

[13](1968) 69 ITR 159
[15](1966) 59 ITR 767
[14](1953) 24 ITR 525

> possession was taken, and on the enhancement, when the appropriate decree made such enhancement and to subsequent interest so long as it ran but was not Paid. Such interest became income which accrued in the year in which it became so recoverable within the meaning of Section 4(1)(b)(i) of the Income-tax Act, 1922, so long as that Act was in force, and, of Section 5(1)(b),of the Income-tax Act, 1961, when that Act commenced to operate. The attribution of the whole of that interest to the year of receipt is manifestly impossible."

(The passages above quoted are from the Tribunal's judgment, with which the High Court recorded its agreement).

(underlining is ours)

The question was answered in favor of the assessee. It is to be noted that in the passage that we have underlined the High Court treats the interest on excess compensation as having accrued only under the executable decree dated February 28, 1951, and not on the date of notification for acquisition or date of dispossession. In *C.I.T., Patiala v. Dr. Sham Lal Narula*[16], the notification for acquisition was on June 21, 1960. On October 11, 1953, a withdrawal notification was issued, which was challenged in the High Court arid quashed by judgment dated February 14, 1955, Possession was taken on October 15, 1951. The Collector's award was on September 30, 1955. On a reference, the compensation was enhanced (date of decree does not appear). In the ultimate analysis, the assessee was entitled to Rs. 48,660 as interest. This was paid in the year previous to the assessment year 1956-57. The Tribunal held (See judgment of the Tribunal as quoted in the judgment at page 629 of 84 ITR 625) that the right to receive interest was determined by the judgment of the High Court dated February 14, 1955, and could be regarded as having accrued on that date. It held that Rs. 42,577.50 being interest for 1951-52 to 1954-55 accrued prior to March 31, 1955, and only Rs. 6,082.50 had accrued during the assessment year, The Punjab and Haryana High Court followed the Mysore view and gave an additional reason in support of it, as follows (p. 632):

"However, we wish to stress the provisions of Section 34 of the Land Acquisition Act. These provisions were noticed by the learned judges of the Mysore High Court, but there is an additional, reason which we must mention in support of the conclusion at which the learned judges of the Mysore High Court arrived for the view which has prevailed with the Tribunal. Under Section 34, the right to recover interest arises the moment the owner is deprived of his property under the Land Acquisition Act. The rate at which he is entitled to interest is also specified. The reason for this is obvious. The owner of property after his dispossession under Section 17 of the Land Acquisition Act is deprived of the income from the same. This does not happen if the possession is taken under Section 16 of the said Act. It is for this reason that Section 34 made a special provision for payment of interest from the date he is deprived of possession without payment of compensation so that the interest on such compensation, compensates him for the loss of income which would have accrued to him if the possession had been taken after making the award under Section 16 and after payment of compensation.

[16](1972) 84 ITR 625 (Punj)

Interest is only payable where an owner is deprived of his property and the payment of its compensation is deferred. Therefore, it is obvious that the benefit which he was to acquire from the property or land was benefit accruing every year which is compensated by way of interest under Section 34. If this is kept in view there is no difficulty in understanding the decision of the Mysore High Court. The interest is definitely accruing each year and is payable as such after the possession is taken from the owner."

This judgment again does not regard the right to interest as arising on the date of Section 4 notification. Perhaps such was its effect, as only the judgment of the High Court dated February 14, 1955, stabilised the Section 4 notification, which was till then in jeopardy. In *Khan Bahadur Ahmed Alladin & Sons v. Commissioner of Income Tax*[17], Chief Justice Jaganmohan Reddy, speaking for the Division Bench of the Andhra Pradesh High Court, had occasion to examine when the right to receive excess compensation decreed by the court can be said to arise. The assessee in that case had purchased an estate from the Government of India, a portion of which was subsequently acquired under the Land Acquisition Act on June 23, 1954. By an award dated 10th December, 1954, the Collector fixed the compensation at Rs. 1,24,131. This was paid on March 22, 1956. On a reference, the civil court enhanced the compensation by Rs. 99,245 by judgment dated 12th July, 1956. The ITO assessed the amount of enhanced compensation for the year 1957-58, but the AAC directed him to reopen the assessment for the assessment year 1956-57, as the award was on 10th December, 1954. The ITO, on reassessment, included the additional compensation also for the assessment for 1955-56, The Tribunal held that the lands formed the stock-in-trade of the assessee's business and that the enhanced compensation accrued on 23rd June, 1954, when the land was taken possession of by the Collector. The learned Chief Justice, after noticing the relevant decisions bearing on the question involved, held (p. 658) :

> "In our view, unless the amount of compensation actually becomes payable or enforceable, it cannot be said to accrue or deemed to accrue. On the date when the Collector awarded the compensation, it is only that amount which had accrued or deemed to accrue, whether, in fact paid or not. But by no stretch of the words in Section 4(1)(b)(i), could it be said that the right to enhanced compensation, which has not yet been accepted by the proper forum, namely, the court, has also become payable on the date when the original compensation became payable, for being included in that year of assessment. The enhanced compensation accrues only when it becomes payable, i.e., when the court accepts the claim. As has been stated earlier, a mere claim by the assessee, after taking of possession of the land, at a particular rate or for a certain sum is not compensation, It must not be forgotten that, even if a court has awarded enhanced compensation, there is a right of appeal by the Government to the High Court, and the High Court may either disallow that claim or reduce the compensation, As against that judgment, there is a further right of appeal to the Supreme Court. The assessee also can appeal against the insufficiency of the enhanced compensation. Can it be said that the final determination by the highest court of the compensation would entitle the Income-tax Officer,

[17](1969) 74 ITR 651

> notwithstanding the period of limitation fixed under the Income-tax Act, to reopen the assessment in which he had included the initial compensation awarded by the Collector and recompute the entire income on the basis of the final compensation ? We do not think there can be any justification for such a proposition. On a proper construction of the terms 'accrue' or 'arise', we are of the view that such an interpretation cannot be placed. The interpretation given by us docs not affect the interests of the revenue. At the same time, it safeguards the assessee and prevents harassment. To hold otherwise would be contrary to the provisions of law."

The principle of this decision was applied in regard to interest by the Andhra Pradesh High Court in *Commissioner of Income Tax v. Smt. Sankari Manickyamma*[18], The logic underlying the extension appears tempting enough.

8. We have given the matter our careful attention, The arguments appear so nicely and evenly balanced, that a choice is not altogether easy. On the one side is the view that acquisition proceedings start the trial which may blow up in stages, of dispossession, award, payment, reference to court, excess compensation and interest, and so on ; and once the spark had been lighted at one end, the avenue is open till the end, although it may not travel to the bitter end. This, however, according to this view, would not prevent the right "arising" or "accruing". On the other view, the mere prospect of making a reference and earning excess compensation and interest, cannot be regarded as a right or income "arising" or "accruing", when riddled with many imponderables, such as the actual making of the reference, the award of excess compensation, and the further award of interest thereon. It appears to us that income by way of interest on excess compensation under Section 28 of the Central Act (Section 30 of the Kerala Act) cannot be regarded as having "accrued" or be "deemed to have accrued" from the moment of dispossession or of the notification under Section 4. At these stages, it cannot invariably be predicated that the assessee would file an application for reference in the court for excess compensation, or that the court would enhance the compensation ; or even if it does so, that it would award interest on the excess compensation. In an allied sphere, considering the provisions of the General Clauses Act, with respect to the expression "right accrued" and "vested right", it has been ruled that a mere right to take advantage of the provisions of a statute, without anything done to effectuate that right, is not a "right accrued" within the meaning of the section-see, for instance, the discussion in *Narayanaswami v. Inspector of Police*[19], We think that the right to interest on the excess compensation can be said to arise, and income by way of such interest can be said to accrue, only when the court decrees interest while awarding excess compensation. This seems to follow from the exposition in Sassoon's case [1954] 26 ITR 27 (SC), which we have noticed earlier. The principle is also stated by the Mysore High Court in [1968] 69 ITR 159, in the passage that we have emphasized. Chief Justice Jagan Mohan Reddy's statement of the principle with respect to excess compensation, in *Khan Bahadur Ahmed Alladin & Sons v. Commissioner of Income Tax*[20], is appealing and the same consideration should apply to interest on excess compensation. The right to excess compensation and to interest thereon cannot be said to "arise" or "accrue", on the date of

[18](1976) 105 ITR 172

[20](1969) 74 ITR 651 (AP)

[19] AIR 1949 Mad 307, paras. 37, 38, 92, 93, 132, 133

dispossession, much less, on the date of the Section 4 notification. On these dates the prospect of a reference and its outcome are alike uncertain, and even if the claimant succeeds on reference in the first instance before the court, the State's right of appeal throws, as the Chief Justice points out, a further element of fluctuation in the scale. We are unable to accept the contrary ruling of the Madras High Court in [1973] 87 ITR 22 (Mad) or of the Punjab and Haryana High Court in [1972] 84 ITR 625.

9. We answer the questions referred in these two references in the affirmative, i.e., in favor of the revenue and against the assessee. There will be no order as to costs.
A copy of this judgment, under the signature of the Registrar and the seal of the court, will be communicated to the Tribunal, as required by law.

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