

**Cit Vs. Rakesh Pd. Singh**

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**Court :** Patna

**Decided On :** Nov-28-2000

**Appeal No. :** M.A. No. 504 of 1999 28 November 2000

**Appellant :** Cit

**Respondent :** Rakesh Pd. Singh

**Judgement :**

This appeal under section 260A of the Income Tax Act, 1961, has been preferred on behalf of the Commissioner, Patna, and another against the order of the Appellate Tribunal in I. T. A- No. 78 (Patna) of 1996, whereby, the order of the Commissioner (Appeals) was reversed.

In short the facts of the case are that the assessee's father, the late Shashi Bhushan Singh, had taken a land on lease from the Patna Regional Development Authority (hereinafter referred to as the 'PRDA') at Mourya Lok Complex, after depositing the total bid money of Rs. 48.25 lakhs. Later, somehow or the other the lease agreement was cancelled by the P.R.D.A. due to certain objections raised by the State Government. Being aggrieved by such action of the P.R.D.A., a writ petition was filed before this court. Ultimately, the High Court after hearing the parties and having appreciated that in spite of the deposit of the total amount of Rs. 48.25 lakhs, the settlee was being un-necessarily harassed, directed the P.R.D.A. to pay interest at the rate of 12 per cent per annum from 23-12-1981, till August, 1986, within a period of six months from the date of receipt of the order.

This is also not in dispute that the assessee and his mother who are the legal heirs of the late Shashi Bhushan Pd. Singh, received the amount of Rs. 60,37,662.80 as interest.

The only dispute raised for consideration was whether the aforesaid amount of interest, which the assessee had received, should be treated as income from other sources or it shall be the capital gain. As per the views expressed by the assessing officer, such a receipt of the assessee shall be considered as capital gain whereas according to the Commissioner of Income Tax, this is the income of the assessee from other sources. The Appellate Tribunal has accepted the views expressed by the assessing officer and allowed the appeal, holding that the instant receipt of the money by the assessee was in terms of the order of the High Court. Because admittedly in view of the disputes which were going on between the assessee and the P. R. D. A, in spite of the deposit of Rs. 48.25 lakhs no land was handed over to the assessee almost for a period of eleven years. Therefore, the High Court directed the P. R. D. A. to refund the amount along with the interest at the rate of 12 per cent. Hence, such type of receipt by the assessee cannot be treated as income from any other sources.

Learned counsel for the appellant contended that no doubt the assessee got back the bid money along with the interest on the basis of the order of the High Court, but the aforesaid amount was never paid either in lieu of or for extinguishment of the right, title and interest of the leased land. Therefore, the assessing officer was not justified and correct to consider the amount of interest as capital gain.

In our view, there is no substance in the submission of learned counsel. The views expressed by the Appellate Tribunal appear in conformity with the views expressed by the Apex Court in different cases, which would be evident from the impugned order itself. Because, in the instant case, as would appear from the order of the High Court, there is no mention, even remotely, that the amount in question was to be paid to the assessee by way of compensation for the extinguishment of his right and title over the property in question. Rather a bare reference to the order, it would appear that such amount was directed to be paid as interest for the period from 28-12-1981, to August, 1986. Therefore, it is

obvious that the amount of interest was neither paid to the assessee as compensation or any price for the extinguishment of his right and title. If such an amount was paid for extinguishment of the right and title, there was no occasion for the High Court to fix the amount of interest and the period covering from 28-12-1981, to August, 1986.

We, therefore, having regard to the submissions as noticed above, also perused the impugned order feel inclined to accept the views expressed by the learned Appellate Tribunal. In the result, therefore, this appeal is dismissed, being devoid of any merit. But, in the circumstances of the case, there shall be no order as to costs.

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