inspecting Assistant Vs. Mahalakshmi Sugar Mills Co. Ltd.

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SooperKanoon Citation : sooperkanoon.com/64456

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-30-1990

Reported in : (1991)36ITD514(Delhi)

Judge : D Sharma, A Kalyanasundharam

Appellant : inspecting Assistant

Respondent : Mahalakshmi Sugar Mills Co. Ltd.

Judgement :
1. As these appeals, one filed by the assessee and the other by the Revenue, are directed against the order dated 23-7-1986, passed by the CIT (Appeals) for the assessment year 1964-65, they were heard together and for the sake of convenience, are being disposed of by a common order.

2. The assessee is a public limited company and is engaged in the business of manufacture and sale of sugar. For the assessment year 1964-65 the accounting year ended on 30th June 1963. The assessee had established a factory for manufacture of sugar at Hamira in the erstwhile state of Kapurthala. The assessee decided to shift its factory to Iqbalpur in the district of Saharanpur (U.P). The assessee's land and factory building at Hamira were requisitioned by the Dy.

Commissioner, Kapurthala under the PEPSU. Requisitioning And Acquisition of Immovable Poperty Act, 1954. An order requisitioning the property was passed on 24-11-1954 and possession of a number of buildings of the assessee was taken

by the Government on 25-12-1954 and possession of some other buildings was taken on later dates in the mouths of March to September 1955. The order requisitioning the properties, operated for about four years and thereafter, the Government started passing orders for de requisitioning of the properties and by August 4, 1958, all the properties were released.

3. As the assessee, the owner of the requisitioned properties and the Punjab Government could not come to any agreement, as to the amount of compensation payable, the District Judge, Kapurthala was appointed by the Punjab Government as an Arbitrator under Section 8 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, for the purpose of making an award determining the amount of compensation payable under the said Act and for specifying person or persons to whom the same was payable in relation to requisitioning of properties, consisting of all buildings and structures, situated on the land. The assessee claimed compensation of Rs. 6,60,777. A written statement was filed on behalf of the State, completely denying the assessee's claim and at the end while urging that the claim be dismissed, proceeded to say that "only a reasonable amount be allowed as compensation to be paid by Jagjit Distilling & Allied Industries Ltd. Hamira, for whose benefit the requisition had been ordered". The Arbitrator made his award on 7-6-1962. The amount of compensation payable to the assessee was determined at Rs. 2,75,610. The Arbitrator directed that the Government should arrange the payment of the amount found due to the company within a period of six months from the date of the award.

Against the award, the assessee as well as the State of Punjab appealed to the Punjab & Haryana High Court.

4. During the pendency of the appeals before the High Court, an interim order was passed on 14-1-1963, directing the payment of compensation awarded to the assessec on its furnishing security to the satisfaction of the court. The assessee received the payment on 7-1-1964, after it had furnished the requisite security. The High Court vide its judgment dated 24-11-1965 reduced the amount of compensation awarded to the assessee company to Rs. 2,31,862. The amount which was finally determined by the High Court was adjusted by the assessee in

its books of account for the year ending 30th June 1966, relevant to the assessment year 1967-68.

5. The amount of Rs. 2,75,610 being the compensation awarded under the award dated 7-6-1962 was assessed by the Assessing Officer in the assessment year 1963-64, rejecting the assessee's contention that the amount was not taxable in that year since both the parties had preferred appeals against the award and the amount had not been finally determined. On appeal, the AAC held that the amount of compensation to be paid to the assessee company was finally determined only in 1965 and that, therefore, the amount could be considered only for the assessment year 1967-68. Against this order the Department came in appeal before the Tribunal. By a composite order dated 11-3-1974 the Tribunal disposed of the departmental appeals for the assessment years 1963-64 and 1964-65 being ITANos. 3390&4581/ 1969-70 in the case of the assessee. The Tribunal was of the view that the compensation accrued to the assessee in the assessment year 1955-56. It was further of the view that the income accrued at the point of time when a right to receive the income arose on the part of the assessee and that the accrual was not held in abeyance merely because the quantification was postponed.

In para 30 of its order the Tribunal expressed its agreement with the contention urged on behalf of Department that compensation can be held to have accrued either in 1954 when the property was taken over or in 1962 when the award was made. The Tribunal was of the view that there was no justification to say that income accrued only when the High Court delivered its judgment in 1965.

6. It appears that the amount of Rs. 2,31,682 being the compensation finally determined by the High Court, was also brought to tax in the year 1967-68. The matter again went up to the Tribunal vide order dated 30th June 1976 in ITA Nos. 5289 & 5452/1972-73, the Tribunal referring to its order for assessment year 1963-64, held that no part of the compensation was assessable in the assessment year 1967-68.The addition on account of compensation restricted to Rs. 1,75,709 by the AAC, was deleted by the Tribunal.

6a. On the basis of orders of the Tribunal passed for the assessment years 1963-64 and 1967-68 in the case of the assessee, the ITO proposed reopening of assessments under Section 147(a) of the Income-tax Act, 1961, for the assessment years 1956-57 and 1964-65. The ITO vide his letter dated 5-2-1980 requested the assessee to file objections. A notice under Section 148 dated 30th March 1981 was also issued wherein it was stated by the ITO that he had reason to believe that income chargeable to tax for assessment year 1964-65 had escaped assessment within the meaning of Section 147 and that, therefore, it was proposed to recompute the income for the said assessment year. In the reassessment order it is stated that a notice under Section 147 (a)/148 was issued to the assessee in respect of assessment year 1964-65. The original assessment for that assessment year was completed on 26-3-1969 on a total income of Rs. 56,026. The ITO mentioned that the action under Section 147(b)/148 was clearly within the period of limitation for reopening and was to give effect to the finding of the Tribunal.

Accordingly, the amount of Rs. 2,31,662 was brought to tax and was added back to the total income of the assessee. The re-assessment was framed on 27-3-1982. Against this order of the ITO the assessee appealed to the CIT(Appeals), before whom action taken by the ITO under Section 147(b)/148 was challenged. It was contended that the period of limitation under Section 147(b) expired on 31-3-1973 and Under Section 147(a) period of limitation expired on 31-3-1981. It was further stated that the notice under Section 148 was served on the assessee on 31-3-1981. It was also contended that since action under Section 150 had not been mentioned by the ITO in his order, the action taken by him could not be presumed to be taken under Section 150. It was further submitted that it could not be said that the assessee had not disclosed material facts which could justify the action under Section 147(a) or Section 147(b). The CIT (Appeals) rejected the assessee's contention that action of the ITO was barred by limitation. It was pointed out that the notice under Section 148 was served within the time limit prescribed under the law. As regards non-disclosure of facts, it was found that in the return filed for the assessment year 1964-65, no mention of compensation having been received was made by the assessee.

There was only a note appended to the balance-sheet in respect of compensation payable at Rs. 2,75,610. The CIT(Appeals) justified the action of the ITO for reopening the assessment under Section l47(a).

The CIT (Appeals) also justified the action of the ITO reopening the assessment under Section 150. In this connection, it was pointed out that the Tribunal has observed in its order that the amount was assessable in the assessment year 1964-65. The assessee's contention challenging the reopening of the assessment was accordingly repealed by the CIT (Appeals).

7. One of the arguments advanced before the CIT (Appeals) was that the ITO was wrong in making the addition of Rs. 2,31,662 under the head "Business income", being compensation received for the requisitioned properties. It was pointed out that the aforesaid amount consisted of the following sums :- of their occupation by Govt.

Rs. 1,47,109.50(ii) Compensation for demolition of building and removal of articles.

Rs. 80,972.00(iii)Compensation for vacation and reoccupation of properties.

Rs. 3,600.00 ---------- It was further contended on behalf of the assessee that as far as the amount of Rs. 1,47,109 was concerned, the same pertained to the assessment years 1956-57 to 1963-64 and as such if any amount was taxable, it would be taxable under the head "Property Income" in the respective years and no part of the same could be subjected to tax as business income in this year. The assessee also raised objections regarding the other items, included in the amount of compensation as finally determined by the High Court. The CIT (Appeals) held the sum of Rs. 1,47,109 being revenue receipt was assessable to tax in the assessment year 1964-65. Out of the amount of Rs. 80,972, the CIT (Appeals) was of the opinion that only an amount of Rs. 25,000 was assessable as provided under Section 41(2). The assessee thereby got a relief of Rs. 55,972. Regarding the amount of Rs. 3,600 the CIT (Appeals) expressed the view that it was revenue receipt and hence was assessable as income. Still feeling aggrieved the assessee has come up in appeal. The revenue also felt aggrieved because of deletion of the

amount of Rs. 55,972 by the CIT (Appeals).

8. Shri S.P. Marwah, learned counsel for the assessee, submitted before us that in this case the assessment was reopened by the ITO under Section 147(a) and that it was only due to a typographical error that it was mentioned in the body of the reassessment order dated 27-3-1982 that the action was being taken under Section 147(b)/148. It was submitted that the ITO could take action under Section 147(a), as limitation for taking action under Section 147(b) had already expired on 31-3-1973, under Section 149 and that for taking action under Section 147(a), notice under Section 148 could have been issued upto 31st March 1981 and that the notice was issued on 30th March 1981 and was served on the assessee on 31-3-1981. Learned counsel for the assessee then submitted that all the primary facts, necessary for the assessment had been fully and truly disclosed by the assessee and, therefore, no action could have been taken under Section 147(a).

Elaborating his argument, the learned counsel contended that the balance-sheet filed by the assessee formed part of the return and in the balance-sheet as on 30th June 1963 a note was appended which disclosed all the material facts relating to the compensation of Rs. 2,75,610 awarded by the Arbitrator under the award made by him and it was further mentioned that both the parties have gone up in appeal against the order of the Arbitrator and that no amount had been received. On the basis of this note it was thus submitted that all the primaiy facts had been fully and truly disclosed during the course of assessment proceedings and, therefore, reopening of the assessment under Section 147(a) was not valid. Reliance was placed on the decision of the Tribunal in ITO v. Arun Sugar Ltd. (1990] 34 ITD 136, in support of the contention, that the assessee had disclosed fully and truly all the material facts. In this connection reliance has also been placed on the decision of the Tribunal in State Bank of lndore v. ITO [1982] 1 ITD 343 (Indore). According to the learned counsel it was on the basis of mere rethinking on the pan of the Department that the assessment has been reopened under Section 147(a), which was not permissible under the law.

9. It was next contended that the Tribunal in its orders for assessment years 1963-64 and 1967-68 did not give any clear finding that the amount of compensation

was assessable in the assessment year 1964-65 and, therefore, it could not be said that the reassessment was made pursuant to the orders of the Tribunal passed in appeal. For this reason, even the provision of Section 150 was not applicable in this case. In this connection it was pointed out that the ITO has also not reopened the assessment by taking recourse to Section 150.

10. Shri Sandeep Tandon, learned Sr. Departmental Representative, on the other hand fully supported the order of the CIT (Appeals) on the point under consideration, regarding reopening of the assessment under Section 147(a). Shri Tandon submitted that in Note No. 2, appended to the balance-sheet, there was no mention of the fact that the assessee had received the amount of Rs. 2,75,610 as a result of the interim order passed by the High Court on 14-1-1963 and therefore it could not be said that the assessee had disclosed fully and truly all material facts and that for this reason re-opening of the assessment would be justified under Section 147(a). However, the main thrust of the argument advanced by the learned Sr. D.R. was that the assessment was reopened and reassessment was made with the aid of the provisions contained in Section 150. In support of this contention our attention was invited to the letter of ITO dated 5-2-1980 addressed to the assessee, a copy whereof is available at page 102 of the paper book, filed by the assessee. In this letter it was stated that the assessment was proposed to be reopened on the basis of the decision taken by the Tribunal vide their orders passed for the assessment years 1963-64 and 1967-68. It was further pointed out that in the reassessment order it was stated that the Tribunal in their orders for assessment years 1963-64 and 1967-68 had also held that the compensation was to be brought to tax in the year when it accrued, i.e., either in 1956-57 or in 1964-65. It was further made clear in the reassessment order that the action under Section 147(b)/148. was clearly within the period of limitation for reopening and to give effect to the finding of the Tribunal. It was submitted by the learned Sr.D.R. that the reassessment has been made in this case in order to give effect to the finding of the Tribunal recorded in their orders for the assessment years 1963-64 and 1967-68. Thus, according to Shri Tandon the action of the ITO in making the reassessment was fully justified under Section 150.

11. In reply, Shri S.P. Marwah submitted that no specific finding or direction was given by the Tribunal in their orders for assessment years 1963-64 and 1967-68 to the effect that the amount of compensation was assessable in the assessment year 1964-65 and, therefore, the reassessment framed in this case could not be said to have been done in consequence of or to give effect to a finding or direction given by the Tribunal in their orders for the assessment years 1963-64 and 1967-68.

12. We have considered the rival submissions made on behalf of the parties and have perused the record of the case, including the paper book filed by the assessee. There is no dispute about the material facts narrated above. We will first address ourselves to the question whether the assessment could have been validly reopened in this case under Section 147(a). Though the ITO has not mentioned the reasons for reopening the assessment, but from the impugned order of the CIT (Appeals) it would appear that while recording the reasons the ITO took note of the Tribunal's observation in respect of embargo of six months on payment of the amount which became assessable in the year 1964-65.

It was also mentioned that the particulars were not fully disclosed and there was only a note appended to the balance-sheet, which could not be construed as leading to the disclosure of material facts fully and completely.

13. A copy of the balance-sheet is available at page 29 of the paper book filed by the assessee. Note No. 2 appended to this balance-sheet, runs as follows:- As already reported the District and Sessions Judge Kapurthala, as Arbitrator, determined on 7-6-1962 compensation payable to the company at Rs. 2,75,610 for use of Company's properties at Hamira which were requisitioned by the Punjab Government for the period from December 1954 to February 1959. Since both the Company and the Punjab Government have gone in appeal against the order of the Arbitrator and no amount has been received, the same has not been adjusted in the books even this year.

A copy of the balance-sheet was filed alongwith the return. The facts stated in the balance-sheet under Note No. 2, were thus available to the ITO during the course of assessment proceedings. These facts, in our opinion, fully and truly disclosed

all material facts relating to the compensation, receivable by the assessee in respect of the requisitioned property. Here it may be recalled that the interim order of the High Court was passed on 14th January, 1963 and pursuant to this order the amount of Rs. 2,75,610 was received by the assessee on 7-1-1964 after furnishing adequate security as per order of the Hon'ble High Court. Thus, the payment was received under the interim order passed by the High Court after the balance-sheet had been drawn.

Further, the fact that both the parties had appealed to the High Court against the award made by the Arbitrator, was clearly mentioned in the balance-sheet under Note No. 2. Thus, considering the facts of the case, we are of the opinion that all the material facts relating to the amount of compensation, receiveable by the assessee for requisition of the property had been fully and truly disclosed during the course of assessment proceedings and those facts were before the ITO when he framed the assessment. It cannot, therefore, be said that there was an escapement of income as a result of non-disclosure of primary facts by the assessee. In this view of the matter we further hold that reopening of the assessment under Section 147(a) was not justified.

14. Though the ITO in this case proposed to reopen the assessment under Section 147(a), he made it clear at the time of framing the reassessment that action under Section 147(b)/148 was clearly within the period of limitation for reopening and this action was to give effect to the finding of the Tribunal. Though the ITO has not mentioned in the reassessment that he was taking recourse to Section 150 but from the fact that he was framing reassessment to give effect to the finding of the Tribunal makes it clear that he was taking recourse to Section 150, while framing the reassessment, though this section was not specifically mentioned in the reassessment order. Moreover, the CIT (Appeals) has also considered the question of reopening of the assessment under Section 150 and after considering this matter has concluded that assessment could be reopened under Section 150.

15. Sections 149 and 150 have to be read together with Section 153.

While two former sections deal with the limits of time, within which notices for assessment or reassessment under Section 148 can be issued, Section 153 deals with the limits of time, within which assessments or reassessments have to be completed. Section 150(1) is an exception to the provisions of Section 149, because it starts with a non obstante clause, "notwithstanding anything contained in Section 149". Section 150(1) runs as follows:- 150(1) Notwithstanding anything contained in Section 149, the notice under Section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision (or by a court in any proceeding under any other law).

Thus, where a notice under Section 148 is issued and served at any time for the purpose of making an assessment or reassessment in consequence of or to give effect to any finding or direction contained in an order passed by an appellate or revisional authority, or on a reference, the provisions of Section 149 as a whole will not be applicable. In a case where an assessment or reassessment for a particular year is necessitated by an order passed by an appellate or revisional authority or on a reference, it may not be possible to adhere to the limits of time prescribed in Section 149 as the order in appeal, reference or revision may have been passed later. It is for this reason that the legislature has not placed any time limit for the purpose of making an assessment or reassessment in these circumstances.

16. According to the submissions made on behalf of the assessee, since no specific direction or finding was given by the Tribunal in their orders for assessment years 1963-64 and 1967-68, regarding assessability of the amount of compensation for the assessment year 1964-65, the reassessment framed by the ITO in this case cannot be said to have been made in consequence of any such finding or direction and, therefore, Section 150(1) was not applicable. Section 150 (1) has to be read along with Explanation 2 to Section 153(3), which before the amendment, introduced by the Direct Tax (Amendment) Act, 1964, w.ei.

6-10-1964, stood as follows:- Explanation 2:-Where by an order under Sections 250,254,260,262, 263 or 264, any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purpose of Section 150 and this section be deemed to be one, made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 2 is, thus, a deeming provision, which was inserted in view of the limited powers of the Tribunal or any authority under the Income-tax Act. The authorities under the Act have no jurisdiction to issue a direction relating to a year of assessment other than the assessment year under appeal or revision. While dealing with the scope of appellate powers under the Income-tax Act, 1922 the Supreme Court in ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 at page 345 observed:- A 'finding', therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. The expression 'direction' cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give under Section 31. Under that section, he can give directions, inter alia, under Section 31 (3)(b), (c) or (e) or Section 31(4). The expression 'direction' in the proviso could only refer to the 'directions' which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression 'finding' as well as the expression 'direction' can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. The words 'in consequence of or to give effect to' do not create any difficulty, for they have to be collated with and cannot enlarge, the scope of the finding or

direction under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions.

17. Explanation 2 to Section 153(3) was enacted to obviate the difficulty in giving effect to the finding or direction of any authority relating to an excluded income from any assessment year. In view of Explanation 2 to Section 153(3), as it stood at the material time, the income on account of compensation receivable by the assessee company in respect of requisitioned properties was excluded from its total income for the assessment years 1963-64 and 1967-68 by virtue of the orders of the Tribunal for those assessment years. Deletion of that income by the Tribunal for the said two assessment years shall be deemed to be a direction and to give effect to that direction, reassessment could be made under Section 147(b) read with Section 150.

18. Here it may be pointed out, even at the risk of repetition, that the ITO proposed to reopen the assessment under Section 147(a), but the assessment order shows that he reopened the assessment under Section 147(6) in order to give effect to the directions of the Tribunal.

Therefore, he took action under Section 147(6) read with Section 150(1), It is now well-settled that a notice under Section 147(a) can be treated as one under Section 147(6), if the required conditions are fulfilled. Section 147 is just an machinery provision, whereby an income which has escaped assessment or has been under assessed in the relevant assessment year, could be brought into the net of taxation. In the case of Ganga Saran & Sons (HUF) v. ITO [1981] 130 ITR 212 it has been held by the Delhi High Court that though the ITO purported to have reopened the assessment under Clause (a) of Section 147, the validity of the notice could be supported by reference to Clause (6). The ITO in the instant case received information from the orders of the Tribunal passed in appeals for assessment years 1963-64 and 1967-68 that the amount of compensation receivable by theassessee in respect of the requisitioned properties had escaped assessment in the assessment year 1964-65. In this connection it would be useful to refer to the relevant observations of the Tribunal, contained in their orders dated 11th March 1974, passed in the appeal for the assessment year 1963-64. These

observations are as follows:- We agree with the contention urged on behalf of the Department that the compensation can be held to have accrued either in 1954 when the property was taken over or in 1962 when the Award was made. There is no justification to say that the income accrued only when the High Court, delivered its judgment in 1965.

In appeal for the assessment year 1967-68, the Tribunal referred to their order for the assessment year 1963-64, wherein the Tribunal decided -(1) that the right to receive compensation accrued in December 1954 relevant to assessment year 1955-56; (2) that, even on the basis of the award, the accrual will be in 1964-65 and not in 1963-64; and that there was no accrual in the assessment year 1967-68. As pointed out above, the ITO received information from the aforesaid orders of the Tribunal that the amount of compensation in respect of requisitioned property had escaped assessment in the assessment year 1964-65. As a consequence of this information coming into possession of the ITO subsequent to the framing of the original assessment, he thought that there was an escapement of income. He accordingly issued the notice under Section 148 and took action under Section 147(b) for reopening the assessment to give effect to the finding of the Tribunal. In this view of the matter we hold that the action of the ITO in reopening the assessment is fully justified under Section 147(6) read with Section 150(1) and Explanation 2 to Section 153(3) of the Income-tax Act, 1961.

19. Learned counsel for the assessee next contended before us that the amount of compensation finally determined by the High Court was not assessable in the assessment year 1964-65, even if the amount of compensation or any part thereof is held to be the income of the assessee. In this connection it was submitted that the compensation finally accrued only on 24-11-1965 when the High Court of Punjab & Haryana determined the amount of compensation at Rs. 2,31,682. In support of this contention reliance has been placed on the judgment of the Delhi High Court in the assessee's own case reported in Mahalaxmi Sugar Mills Co. Ltd. v. CIT [1986] 157 ITR 683 and the decision of the Supreme Court in CIT v. Hindustan Housing & Land Development Trust Ltd. [1986] 161 ITR 524. It was further submitted that so far as the amount of compensation relating to the occupation of the requisitioned property by the State of Punjab was concerned, the

same accrued on monthly basis and was assessable in various assessment years.

20. Learned Sr. D.R. on the other hand fully supported the impugned order of the CIT (Appeals). It was contended that the amount of compensation accrued under the award made by the Arbitrator on 7-6-1962 and since the amount of compensation was to be paid within six months of the date of the award, the amount of compensation was assessable in the assessment year 1964-65, as the accrual was postponed by a period of six months. It was thus contended that since the right to receive compensation accrued in the accounting year relevant to assessment year 1964-65, it was rightly brought to tax in this assessment year.

21. We have considered the submissions made on behalf of the parties.

As has already been stated above, the Arbitrator was appointed by the Punjab Government under Section 8 of the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, for the purpose of making an award, determining the amount of compensation payable and for specifying person or persons to whom the same is payable in relation to requisitioning of the properties. Before the Arbitrator, the Punjab Government filed a written statement, pleading that the petition was liable to be dismissed and that the company could recover a reasonable amount as compensation from Jagjit Distilling & Allied Industries Ltd., for whose benefit the property had been requisitioned by the Government. These facts are mentioned in the award. Further, the judgment of the Hon'ble Punjab & Haryana High Court given in the appeals filed by the assessee company and the State of Punjab, against the award made by the Arbitrator, also goes to show that the State of Punjab completely denied the claim of the assessee for compensation in respect of the requisitioned property. The assessee's right to receive the compensation as also the quantum of compensation was thus finally decided by the Hon'ble Punjab High Court, vide its judgment dated 24-11-1965. The assessee's right to receive the compensation became real and enforceable only after the matter had been finally decided by the High Court. In fact the issue steads concluded in favour of the assessee in its own case by the decision of the Delhi High Court in Mahalaxmi Sugar Mills Co. Ltd.'s case (supra). The ITO had earlier held that the right to receive compensation accrued to the assessee on

making the award by the District Judge on 7-6-1962 and accordingly he assessed the compensation in the assessment year 1963-64. The AAC was, however, of the view that it was only when the matter was finally settled by the High Court that the amount paid to the assessee was finally determined and as this happened on November 24,1965, it was only on this date that the liability crystallised so far as the government was concerned and the same income finally accrued to the assessee. According to the AAC the amount was to be considered in the assessment year 1967-68. The Tribunal was of the view, as already noticed above, that the amount of compensation was assessable in the assessment year 1955-56. Considering this issue, their Lordships of the Delhi High Court observed thus:- We have already pointed out above that the Tribunal was perhaps not correct in its approach. We cannot accept the argument advanced on behalf of the Department that a right accrued in favour of the assessee to receive compensation on the making of the award and if the compensation or part thereof represented income, such income accrued on June 7, 1962 and that the pendency of theappeal against the award did not postpone the right and, consequently, the accrual.

22. Thus, the High Court did not accept the argument advanced on behalf of the Department that the pendency of the appeal against the award did not postpone the right and consequently, the accrual. The view of the High Court was that pendency of the appeals, filed against the award, made by the Arbitrator, postponed the right to receive the compensation and consequently the accrual. This decision, given in the assessee's own case, clearly supports its contention that right to receive compensation accrued only on 24-11-1965 when the Punjab & Haryana High Court finally decided the matter.

23. The decision of the Supreme Court in Hindustan Housing & Land Development Trust Ltd's case (supra) also supports the view canvassed before us on behalf of the assessee. In that case certain lands belonging to the assessee company, were acquired by the State Government. The Land Acquisition Officer awarded a sum of Rs. 24,97,249 as compensation. On an appeal, preferred by the assessee company, the Arbitrator made an award dated 29-7-1955 fixing the compensation at Rs. 30,10,873. Thereupon, the State Government preferred an appeal to the

High Court. Pending the appeal the State Government deposited in court Rs. 7,36,691 being the additional amount payable under the award. The assessee company was permitted to withdraw that amount only on furnishing a security bond for refunding the amount in the event of appeal being allowed. On receiving the amount the assessee credited it in the suspense account on the date of receipt of the amount. The question was, whether, the sum of Rs. 7,24,940 (the balance having been already taxed) would be treated as the income of the assessee for the assessment year 1956-57 on the ground that it became payable pursuant to the Arbitrator's award, which was made on 29-7-1955. The Tribunal held that the amount did not accrue to the assessee as its income during the relevant previous year ending 31-3-1956 and was, therefore, not taxable in the assessment year 1956-57. On a reference the High Court affirmed the decision of the Tribunal. On an appeal to the Supreme Court it was held by their Lordships that although the award was made on 29-7-1955, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in appeal filed by the State Government and the dispute was regarded by the court as real and substantial. It was further held that there was no absolute right to receive the amount at that stage. If the appeal was allowed in its entirety the right to payment of enhanced compensation would have fallen altogether. The extra amount of compensation was not the income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57. The Hon'ble Supreme Court further held that there is a clear distinction between cases, as the present one is, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received and the cases where the right to receive compensation is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. This authority, in our opinion, is fully applicable to the facts of the case in hand. In the instant case, as has already been stated above, the state government not only disputed the claim of the assessee to receive the compensation, but also disputed the amount of compensation. This dispute was finally settled by the High Court on 24-11-1965. Thus in view of the ratio laid down by the Supreme Court in the said case, it must be held that the right to receive compensation accrued only on 24-11-1965, when the matter was finally settled by the High Court. In this view of the matter, we

further hold that the amount of compensation or any part thereof is not assessable in the assessment year 1964-65.

24. In view of what has been stated above, the assessee's appeal deserves to be allowed on the ground that the amount of compensation or any part thereof is not assessable in the assessment year 1964-65. The Revenue's appeal, which assails the order of the CIT (Appeals), deleting the addition to the extent of Rs. 55,972 out of a total addition of Rs. 2,31,662 must fail.

25. Accordingly, the assessee's appeal is allowed to the extent indicated above. The appeal filed by the Revenue is dismissed.