

Kumbh Singh Vs. Ito

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Court : Rajasthan

Decided On : Nov-30-2000

Reported in : (2002)76TTJ(NULL)306

Appeal No. : ITA Nos. 2100 to 2107/Jp/1995 A.Y. 1985-86 to 1992-93 30 November 2000

Appellant : Kumbh Singh

Respondent : ito

Advocate for Pet/Ap. : Suresh Ojha, *for the Assessee* R.N. Jangid, *for the Revenue*

Judgement :

ORDER

As all these above appeals involve common points so we are disposing them of by this common order for the sake of convenience.

2. ITA Nos. 2100 to 2107/Jp/1995 are appeals by one assessee, namely, Shri Kumbh Singh for assessment years 1985-86 to 1992-93 and are directed against the common order of Commissioner (Appeals), Jodhpur, dated 26-9-1995, whereby he upheld the action of assessing officer in assessing interest on compensation of land.

3. ITA Nos. 2108 to 2115/Jp/1995 are appeals by one assessee, namely, Shri Madho Singh for assessment years 1985-86 to 1992-93 and are directed against the common order of Commissioner (Appeals), Jodhpur, dated 26-9-1995, whereby he upheld the action of assessing officer in assessing interest on compensation of 'land.

4. ITA Nos. 2121 to 2128/Jp/1995 are appeals by one assessee Shri Kishore Singh for assessment years 1985-86 to 1992-93 and are directed against the common order of Commissioner (Appeals), Jodhpur, dated 26-9-1995, whereby he upheld the action of assessing officer in assessing interest on compensation of land.

5. Representatives of both the sides have furnished their written submissions. We have gone through the written submissions of the rival sides and have also perused the records.

6. The facts in all the above 24 appeals are common. The facts, in brief, are that the agricultural land of a large number of persons of village Udasar, Dist. Bikaner, Rajasthan, was acquired by the Government of India (Ministry of Defence), New Delhi. The Government of India remitted the market value of land to the Government of Rajasthan. But the Government of Rajasthan did not give compensation for the said acquired land to the landholders, and rather offered to them other land, which the said farmers considered as not fit for cultivation, and did not accept. The farmers, whose land had been compulsorily acquired, had to knock the doors of High Court which directed the Government of Rajasthan to pay compensation. In compliance, the State Government made payment of compensation as also interest thereon for delayed payment of the same. Thereupon the Income Tax Officer initiated proceedings under section 148, and ultimately made ex parte assessment under section 44 of the Income Tax Act, 1961, for assessment years 1984-85 to 1992-93 rejecting request for allowing time for filing return. The learned Commissioner (Appeals) rejected the assessee's appeals for assessment years 1985-86 to 1992-93. However, for assessment year 1984-85, the assessee went in revision under section 264 of Income Tax Act and the learned Commissioner in his revisional order, set aside the issue for deciding

afresh in view of Circular of CBDT No. 225/5/96/ITA/II, dated 28-2-1996 (copy placed in AR's P.B.) being to the effect that the payment of compensation made to agriculturists of village Udasar is covered by the decision of Honble Kerala High Court in the case of CIT v. Periyar & Parikanni Rubbers Ltd. : [1973]87ITR666(Ker) wherein the Honble Court, drawing distinction between compulsory acquisition of land by government under the Land Acquisition Act, 1894 and that under any other law or agreement, held that in the latter case the property in land vests in the government on passing of the award and so the interest paid from the date of taking over of possession of land by government upto the date of award is in the nature of compensation for deprivation of use of land by the landowners/holders, and so is capital receipt and not revenue receipt, and accordingly not chargeable to income-tax. The Board's aforesaid Instruction/Circular was issued in the special fact-situation that the tax together with interest charged under various sections like 139(8), 217, 234A, 234B was even more than the actual interest-compensation received by the farmers of Udasar, who were mostly from the downtrodden community and so on their representation to the Government of India, the Finance Ministry considered the matter sympathetically and accordingly at the instance of the Finance Ministry Government of India, the CBDT issued the above instruction/circular wherein they also directed the Chief Commissioners to get the appeals pending before Commissioner (Appeals)/Tribunal fixed for hearing on priority basis and request for setting aside the matter to assessing officer so as to give effect to the Board's instruction/Circular. In the matter of the 24 appeals of three assessees, being 8 appeals of each assessee for 8 assessment years 1985-86 to 1992-93, presently before us for consideration, the learned Commissioner (Appeals) dismissed the appeals of assessees holding that the interest on compensation was income of assessee as laid down by the Hon'ble Supreme Court in the case of Dr. Shamlal Narula v. CIT : [1964]53ITR151(SC) and that he could not go against that.

7. We having considered the rival written contentions as also the relevant material on record. The assessee have raised as many as 16 or 17 grounds in original and have also filed petitions for admitting five additional grounds more. After considering the facts and circumstances of the case we allow the petition and permit the three assessees to raise the additional grounds.

8. The additional ground No. 1, which is common in all the appeals, is as under :

'That the assessment completed by the Income Tax Officer is illegal and against law, in view of the instructions of CBDT F. No. 226/51/ITA-H, dated 29-2-1996, because the instructions issued by the Board is binding upon the assessing officer.'

In the aforesaid ground, the Board's instruction has been mentioned as being F. No. '226' which has been wrongly mentioned as the correct No. is '225'. In : [1964]53ITR151(SC) (supra) the Hon'ble Supreme Court has held that when land is compulsorily acquired by the Government under Land Acquisition Act, 1894 (hereinafter referred to as LA Act), the property in land vests absolutely in the Government on the date on which possession of land is taken over by the collector in view of the provisions of sections 16 and 17 of LA Act and that the interest paid on compensation from the date of taking over of possession of land till it is paid is not compensation of land acquired which deprived the claimant of his right to possession of land, but interest is paid for use of his money by the State. It was accordingly held that such interest payment is revenue receipt and liable to tax under Income Tax Act. It was also held that such interest payment could not be described as damages or compensation for owner's right to retain possession of land for the reason that he had no right to retain possession of land after possession was taken over by the Government. In T.N.K. Govindaraju Chetti v. CIT (1965) 66 ITR 465, the Hon'ble Supreme Court, in the facts and circumstances of the case, held that when owner of the property was dispossessed pursuant to the order of compulsory acquisition, an agreement for payment of interest on amount of compensation was implied. However, there was no provision of payment of interest on compensation in The Requisition of Lands (Continuous of Powers) Act, 1947, whereunder the land was acquired in the said case. It was also held that the principle laid down in Shamlal Narula's case (supra) that if source of obligation imposed by statute to pay interest arises because the claimant is kept out of his money, such interest is chargeable to tax as income, will apply if interest is payable under agreement express or implied. In the fact-situation of the said case accordingly the interest on delayed payment of compensation was held to be taxable. In : [1973]87ITR666(Ker) (supra), the

Hon'ble Kerala High Court drew a distinction between the possession of land assumed under the provisions of LA Act, 1894, and the possession otherwise taken. In the former case there was provision in sections 16 and 17 of LA Act that on possession being taken the property will vest in the government, In the latter case in the absence of any such statutory provision even when the possession was assumed by the government whether under some provision of law or by agreement or unauthorisedly there remained deprivation of the property and so the interest paid by the Government was merely compensation for deprivation of such property. In the cited case the possession of land was taken by the government not under the provisions of LA Act but on agreement between the assessee and the government. The possession of land was taken in November, 1961 whereas the award was passed in August, 1962. The payment was made in September, 1962. In the facts and circumstances of the case of Honble Kerala High Court held that the property was not vested in the government till the award was passed in August, 1962, and the nature of possession changed only from that date. Accordingly, the payment of interest on the amount of compensation for land for the period from the date of taking possession (November 1961) up to the date of passing award (August, 1962) was held to be a capital receipt and hence not assessable. However, the interest from the date of award up to the payment of compensation awarded was held to be revenue receipt.

9. In the cases in hand the proceedings for compulsory acquisition of land are stated to have not been initiated under LA Act. Accordingly, the ratio decidendi of the case of CIT v. Periyar and Pareekanni Rubbers Ltd. (supra) of Honble Kerala High Court was held to be applicable and accordingly accepted by CBDT and in turn issued instructions/Circular No. 225, dated 29-2-1996, referred to above. In the said instructions it has been stated that the interest up to the date of award will form part of compensation for land and hence in the nature of capital receipt and not subject to the tax as interest income under the head 'Income from other sources'. At the same time it was also stated that where the land was acquired under the LA Act the ratio of the Supreme Court judgment in the case of Sharnlal Narula (supra) shall apply. Instructions of CBDT are undeniably binding on IT authorities.

10. We may also note that in similar circumstances in the cases of Shil Amar Sukh and Shri Mohan Ram, Tribunal, Jaipur has vide its common decision dated 30-4-1998, in ITA Nos. 2333 to 2341/Jp/1995 for assessment years 1984-85 to 1992-93 and in ITA Nos, 2342 to 2350/Jp/1996 for assessment years 1984-85 to 1992-93 set aside the assessment orders and restored the matters to assessing officer to examine the issue afresh and decide on merits. Again from the perusal of record as contained in paper book submitted by the learned authorised representative of assessee by way of written submission we find that a copy of fresh assessment under section 264/143(3), dated 16-3-1998, for assessment year 1984-85 in the case of the assessee Kumbh Singh has been placed wherein the interest payment to the assessee up to the date of award for acquisition of land has been treated/accepted as capital receipt. In the written contention of the learned authorised representative of the assessee although request for quashing of the ex parte assessments has been made yet in the alternative it has also been requested that the same may be set aside and the matter be restored to assessing officer. Similarly, in the written contention of the learned Departmental Representative of revenue also a request for setting aside of the issue to assessing officer has been made. As such considering all the facts and circumstances of the case as also the legal position, settled as seen above, we are of the view that it will be in the interest of justice to set aside the ex parte assessments made under section 144 along with Commissioner (Appeals)'s impugned orders in the cases of all the three aforesaid assessees for all the 8 assessment years 1985-86 to 1992-93 involved in these appeals to assessing officer for deciding afresh in accordance with law keeping in view the observations made above. We order accordingly.

11. In the result all the above 24 appeals of the three assessees are partly allowed as indicated above for statistical purposes.