A

COMMISSIONER OF INCOME-TAX,
WEST BENGAL-II, CALCUTTA

*v.*

B HINDUSTAN HOUSING & LAND DEVELOPMENT TRUST LIMITED

JULY 29, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

C *Income-tax Act, 1922 s. 4(1)(b)(i)/Income-tax Act, 1961: s. 5(1)(b)—Acquisition of land—Additional compensation received—liability to tax—Income whether could be deemed to have accrued or arisen during the relevant assessment year.*

D **During the pendency of the appeal by the State against an arbitrator's award made on July 29, 1955 enhancing the original amount of compensation the Government deposited the extra amount, which the assessee was permitted to withdraw on May 9, 1956 on furnishing security. During the assessment proceedings for the relevant assessment year the Income-tax Officer brought that amount to tax as the assessee's** E **business income. The Appellate Tribunal, however, accepted the assessee's contention that the amount could not be said to have accrued to the assessee as its income during the relevant previous year, and therefore, was not liable to tax in the particular assessment year. The High Court answered the question referred in favour of the assessee and against the Revenue.**

F **Dismissing the appeal of the Revenue, this Court,**

**HELD: It is only on the final determination of the amount of compensation that the right to such income in the nature of compensation arises or accrues and till then there is no liability *in praesenti* in respect of the additional amount of compensation claimed by the owner** G **of the land. [396G]**

**There is a clear distinction between cases where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to** H **be determined in accordance with settled or accepted principles. [396H;397A-B]**

**In the instant case, although the award was made by the arbitrator on July 29, 1955 enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the Government. There was no absolute right to receive the amount at that stage, for if the appeal had been allowed in its entirety the right to payment of the enhanced compensation would have fallen altogether. The sum, therefore, could not be said to have accrued or arisen during the relevant assessment year.** [393G; 394A-B]

*E.D. Sassoon & Company Ltd. and others* **v.** *Commissioner of Income-tax, Bombay City,* **[1954] 26 ITR 27,** *Commissioner of Income-tax* **v.** *Jai Parkash Om Parkash Co. Ltd.,* **(1961) 41 ITR 718,** *Pope The King Match Factory* **v.** *Commissioner of Income-tax,* **[1963] 50 ITR 495,** *Khan Bahadur Ahmed Alladin & Sons* **v.** *Commissioner of Income-tax,* **[1969] 74 ITR 651,** *Topandas Kundanmal* **v.** *Commissioner of Income-tax, Gujarat,* **[1978] 114 ITR 237,** *Harish Chandra Raj Singh* **v.** *The Deputy Land Acquisition Officer & Anr.,* **[1962] 1 SCR 676 and** *Additional Commissioner of Income-tax, Gujarat,* **v.** *New Jehangir Vakil Mills Co. Ltd.,* **(1979) 117 ITR 849, referred to.**

*Kedarnath Jute Mfg. Co. Ltd.* **v.** *Commissioner of Income-Tax (Central), Calcutta,* **[1971] 82 ITR 363, distinguished.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1126 (NT) of 1974

From the Judgment Order dated 9th January, 1973 of the Calcutta High Court in Income Tax Reference No. 5 of 1967.

V.S. Desai, Dr. M.B. Rao and Miss A. Subhashini for the Appellant.

Nemo for the Respondent.

The Judgment of the Court was delivered by

**PATHAK, J.** This appeal by certificate granted by the High Court is directed against the judgment of the Calcutta High Court answering the following question in the negative:

> "Whether on the facts and in the circumstances of the case, the extra amount of compensation amounting to Rs.

A 7,24,914 was income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57."

The assessee, who is the respondent before us, is a limited company dealing in land. It maintains its accounts on the mercantile system. By an order dated June 21, 1946 under rule 75A(1) of the Defence of India Rules read with s. 19 of the Defence of India Act, 1939 certain plots of land measuring about 19.17 acres in village Kankulia in the District of 24 Parganas and belonging to the assessee, were requisitioned by the Government of West Bengal. Subsequently the land was acquired permanently in the State Government under s. 5, Requisition of Land (Continuance of Powers) Act, 1951 by a notice of acquisition dated December 27, 1952 published in the Gazette dated January 8, 1953. The Land Acquisition Officer awarded a sum of Rs.24,97,249 as compensation payable to the assessee. The assessee was not satisfied with the amount of compensation, and preferred an appeal before the Arbitrator, 24 Parganas, Calcutta. The Arbitrator made an award dated July 29, 1955 whereby he fixed the amount of compensation at Rs.30,10,873 on account of the permanent acquisition of the land, thus enhancing the original amount of compensation by Rs.5,13,624 on which he directed interest at 5 per cent per annum from January 8, 1953, the date of acquisition, to the date of payment. The Arbitrator also directed that further recurring compensation at Rs.6272/10/4 per mensem should be paid to assessee from the date of requisition till the date of the acquisition.

The State Government now appealed to the High Court and during the pendency of the appeal on April 25, 1956 it deposited Rs.7,36,691, which the assessee was permitted to withdraw on May 9, 1956 on furnishing security. On receipt of the amount the assessee credited it in its suspense account on the same date.

During the assessment proceedings for the assessment yeat 1956-57, the relevant accounting period being the year ended March 31, 1956 the Income Tax Officer brought to tax a sum of Rs.7,24,914 in the assessee's business income. This represented the difference between the sum of Rs.7,37,190 payable to the assessee in terms of the award dated July 29, 1956 of the Arbitrator and a sum of Rs.12,276 out of that amount which had already been assessed to tax. The Income tax Officer treated the sum as liable to income-tax during that year on the basis that the income accrued to the assessee on the date of the award.

The assessment was confirmed by the Appellate Assistant Commissioner of Income-tax on first appeal. In second appeal by the assessee before the Income-tax Appellate Tribunal, two contentions were raised by it. It was urged that the amount of compensation received by the assessee was not a receipt of a revenue nature. It was also contended that in any event the amount did not accrue to the assessee as its income during the relevant previous year ended March 31, 1956. The Appellate Tribunal rejected the first contention and held that the compensation received by the assessee related to the acquisition of land which was the stock-in-trade of the assessee, and was, therefore, a trading receipt of the business carried on by the assessee, and therefore, a receipt of a revenue nature liable to tax. The Appellate Tribunal, however, accepted the other contention that the sum of Rs.7,24,914 was not taxable in the assessment year 1956-57. It allowed the appeal accordingly by its order dated February 22, 1964. At the instance of the Revenue the Appellate Tribunal referred the question of law set out earlier to the Calcutta High Court for its opinion, and by its judgment dated January 9, 1973 the High Court answered the question in favour of the assessee and against the Revenue.

The question raised in this appeal is limited to the point whether on the facts and circumstances of the case the Revenue can claim that the sum of Rs.7,24,914 payable to the assessee as compensation can be said to have accrued to it as income during the previous year ended March 31, 1956 relevant to the assessment year 1956-57. Now as long ago as *E.D. Sassoon & Company Ltd. and others* v. *Commissioner of Income-tax, Bombay City*, [1954] 26 ITR 27 this Court considered the question as to the point at which income could be said to accrue or arise to an assessee for the purpose of the Indian Income Tax Act. In the majority judgment delivered by N.H. Bhagwati, J. it was explained that the words "arising or accruing" describe a right to receive profits, and that there must be a debt owed by some body. "Unless and until there is created in favour of the assessee a debt due by somebody", it was observed "it cannot be said that he has acquired a right to receive the income or the income has accrued to him". In the present case, although the award was made by the Arbitrator on July 29, 1955 enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State Government. Indeed, the dispute was regarded by the Court as real and substantial, because the assessee was not permitted to withdraw the sum of Rs.7,36,691 deposited by the State Government on April 25, 1956 without furnishing a security bond for refunding the amount in

A the event of the appeal being allowed. 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 the enhanced compensation would have fallen altogether. This is a case which must be distinguished from that decided by this Court in *Kedarnath Jute Mfg. Co. Limited.* v. Commissioner of Income-Tax (Central), Calcutta., [1971] 82 ITR 363 where the liability to sales tax arose immediately on a dealer affecting sales which were subject to sales tax and what remained to be done was a mere quantification of that liability. The case compares rather with *Commissioner of Income-tax* v. *Jai Parkash Om Parkash Co. Ltd.* [1961] 41 ITR 718. The very foundation of the claim made by the assessee was in serious jeopardy and nothing would be due if the appeal was decided against the assessee. Our attention has been drawn by the Revenue to *Pope The King Match Factory* v. *Commissioner of Income-tax*, [1963] 50 ITR 495. That case, however, proceeded on the basis that excise duty was payable and its quantification alone remained to be decided in the appeal. We may point out that the Andhra Pradesh High Court, dealing with the taxability of compensation received under the Land Acquisition Act in *Khan Bahadur Ahmed Alladin & Sons.* v. *Commissioner of Income-tax*, [1969] 74 ITR 651 held that when land was taken over by the Government the right of the owner to compensation was an inchoate right until the compensation had been actually determined and had become payable. It was observed that the enhanced compensation accrued to an assessee only when the Court accepted the claim and not when the land was taken over by the Government. Examining the question whether income could be said to have accrued to the assessee on the date when possession of the land was taken by the Government for the purpose of assessment to tax in the year of assessment P. Jaganmohan Reddy, C.J., speaking for the Court, said:

> "If the actual amount of compensation has not been fixed, no income could accrue to him. It cannot be contended that the mere claim by the assessee, after taking of possession, at a particular rate or for a certain sum is the compensation. It is the amount actually awarded by the Collector or subsequently decreed by the court which accrues to him, and the respective amounts, whether awarded by the Collector or the court accrue on the respective dates on which the award or the decree is passed. Income-tax is not levied on a mere right to receive compensation; there must be something tangible, something in the nature of a debt,

something in the nature of an obligation to pay an ascertained amount. Till such time, no income can be said to have accrued ..... 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 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 was 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 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, 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 does 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 legal position was explained in further detail by the Gujarat High Court in *Topandas Kundanmal* v. *Commissioner of Income-tax, Gujarat,* [1978] 114 ITR 237. The High Court was called upon to decide without the right to receive the enhanced compensation under the Land Acquisition Act accrued or arose to the assessee when he sought

A a reference under s. 18 of the Act or when the award was made by the Civil Judge although an appeal was pending against that award. The learned Judges referred to the nature of an award made by the Collector, and adverting to the opinion of this Court in *Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer & Anr.*, [1962] 1 B SCR 676 that the award made by the Collector was merely an offer or tender of the compensation determined by the Collector to the onwer of the property on the acquisition, the High Court observed:

> "...the legal position which emerges is that there is no liability in praesenti to pay an enhanced compensation till it is judicially determined by the final court since the entire C question, namely, whether the offer made by the Land Acquisition Officer is inadequate and the claimant is entitled to an additional compensation and if yes, at what rate is in flux till the question is set at rest finally, we do not think that any enforceable right to a particular amount of D compensation arises. The offer made by Land Acquisition Officer, by his award, if not accepted by a claimant would not result automatically in a liability to pay additional compensation as claimed by party aggrieved. There is no doubt a liability to pay compensation as offered by the Land Acquisition Officer. But that is far from saying that liability E is a liability to pay additional compensation or enhanced compensation as claimed by a party aggrieved. If there is an existing liability, the mere fact that the payment is postponed to the future would not detract that liability from becoming a debt but the liability to pay unliquidated damages or additional compensation which are inchoate or contingent would not create a debt." F

*Khan Bahadur Ahmed Alladin & Sons* (supra) and *Topandas Kundanmal* (supra) were relied on by the Gujarat High Court in *Additional Commissioner of Income-tax, Gujarat* v. *New Jehangir Vakil Mills Co. Ltd.*, [1979] 117 I.T.R. 849 for reaffirming that it was on the final G. determination of the amount of compensation that the right to such income in the nature of compensation would arise or accrue and till then there was no liability *in praesenti* in respect of the additional amount of compensation claimed by the owner of the land.

It is unnecessary to refer to all the cases cited before us. It is H sufficient to point out that there is a clear distinction between cases

such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. We are of opinion that the High Court is right in the view taken by it and, therefore, this appeal must be dismissed. A B

The appeal is dismissed. There is no order as to costs.

P.S.S. Appeal dismissed.