

1964

April 9

DR. SHAMLAL NARULA

v.

COMMISSIONER OF INCOME-TAX, PUNJAB

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Income Tax—Land acquired—Award made by Collector—Interest on compensation awarded—If interest amounted to a part of compensation—Indian Income-tax Act, 1922 (11 of 1922), ss. 3, 4—Land Acquisition Act, 1894, s. 34.

The State acquired the land of the appellant. The Collector made an award under the Land Acquisition Act as a result of which the appellant received Rs. 2,81,822/-, which included a sum of Rs. 48,660/- as interest upto the date of the award. The Income-tax Officer included Rs. 48,660/- (the said interest) in the total income of the appellant on the ground that the said amount was not a capital receipt. The matter went upto the Income-tax Appellate Tribunal. The Tribunal excluded the said interest from the total income of the assessee (appellant) on the ground that it was a capital receipt. On a reference the High Court held that the said interest was not a capital but a revenue receipt and as such liable to tax under the Indian Income-tax Act. The High Court granted a certificate to the appellant to file an appeal to the Supreme Court. Hence the appeal.

Held: (i) The scheme of the Land Acquisition Act and the express provisions thereof establish that the statutory interest payable under s. 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired. In other words the statutory interest paid under s. 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income-tax Act.

Behari Lal Bhargava v. Commissioner of Income-tax, C.P. and U.P., (1941), 9 I.T.R. and *P. V. Kurien v. Commissioner of Income-tax, Kerala*, (1962), 46 I.T.R. 288, overruled.

Westminster Bank Ltd. v. Riches, (1947), 28 T.C. 159. *Commissioner of Income-tax, Madras v. CT. BM. N. Narayanan Chettiar*, (1943), 11 I.T.R. 470 and *Commissioner of Income-tax Bihar and Orissa v. Maharajadhiraj Sir Kameshwar Singh*, (1953), 23 I.T.R. 212, approved.

Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission, A.I.R. 1928 P.C. 287 and *Revenue Divisional Officer, Trichinopoly v. Venkatarama Ayyar*, A.I.R. 1936 Mad. 199, distinguished.

Shaw Wallace's case, A.I.R. 1932 P.C. 138, *Schulze v. Bensted*, (1915), 7 T.C. 30, and *Commissioner of Inland Revenue v. Barnato*, (1934—36), 20 T.C. 455, referred to.

(ii) The interest under s. 34 of the Land Acquisition Act shall be paid on the amount awarded from the time the Collector take possession until the amount is paid or deposited. It

makes no difference in the legal position between a case where possession has been taken before and that where possession has been taken after the award, for in either case the title vests in the Government only after possession has been taken.

In no sense of the term can it (interest) be described as damages or compensation for the owner's right to retain possession, for as he has no right to retain possession after possession was taken under s. 16 or s. 17 of the Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 503 of 1963. Appeal from the judgment and order dated January 31, 1962, of the Punjab High Court in I.T.R. No. 28 of 1960.

B. N. Kripal and *A. N. Kripal*, for the appellant.

Gopal Singh and *R. N. Sachthey*, for the respondent.

April 9, 1964. The judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by certificate granted by the High Court of Punjab raises the question whether interest paid under s. 34 of the Land Acquisition Act, 1894, hereinafter called the Act, is of the nature of a capital receipt or of a revenue receipt.

The relevant facts are not in dispute and they may be briefly stated. The appellant, Dr. Shamlal Narula, is the Manager of a Hindu undivided family, which owned, *inter alia*, 40 bighas and 11 biswas of land in the town of Patiala. The Patiala State Government initiated land acquisition proceedings for acquiring the said land under Regulation then prevailing in the Patiala State. It is common case that the State Regulations are in *pari materia* with the provisions of the Act. The State of Patiala first merged into the Union of Pepsu and later the Union of Pepsu merged into the State of Punjab. It is also common case that there was a Land Acquisition Act in the Union of Pepsu containing provisions similar to those obtaining in the Act. On October 6, 1953, the Act was extended to the Union of Pepsu. On September 30, 1955, the Collector of Patiala made an award under the Act as a result of which the appellant received on December 1, 1955, a sum of Rs. 2,81,822/-, which included a sum of 48,660/- as interest up to the date of the award. For the year 1956-57, the Income-tax Officer included the said interest in the income of the Hindu undivided family of which the appellant is the manager, and assessed the same to income-tax, after overruling the appellant's contention that the said interest was a capital receipt and, therefore, not liable to tax. On June 14, 1957, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. The Appellant preferred an appeal to the Income-tax Appellate Tribunal. The said Tribunal by its order dated July 9, 1957, held that

1964

Dr. Shamlal Narula
v.
Commissioner of
Income-Tax, Punjab

Subba Rao, J.

1964

Dr. Sham Lal Narula
v.
Commissioner of
Income-Tax, Punjab
Subba Rao, J.

the said amount representing the interest was a capital receipt and on that finding the said amount was excluded from the total income of the assessee. At the instance of the Commissioner of Income-tax the said Tribunal referred the following question to the High Court of Punjab under s. 66-(1) of the Income-tax Act, 1922:

“Whether on a true interpretation of section 34 of the Land Acquisition Act and the Award given by the Collector of Pepsu on the 30th September, 1955, the sum of Rs. 48,660/-, was capital receipt not liable to tax under the Indian Income-tax Act?”

The said reference was heard by a Division Bench of the High Court and it held that the said amount was not a capital but a revenue receipt and as such liable to tax under the Indian Income-tax Act. Hence the present appeal.

Learned counsel for the appellant raised before us two contentions, namely, (i) the sum of Rs. 48,660/- received by the appellant under the award was compensation for depriving him of his right to possession of his property and was therefore, a capital receipt not liable to tax; and (ii) whatever may be the character of the amount awarded under s. 34 of the Act by way of interest in a case where possession of the land has been taken by the State after the award, in a case where possession of the land acquired has been taken before the award, it would be a capital receipt, for it is said that in the latter the interest necessarily takes the character of compensation for depriving the owner of the land his right to possession.

On behalf of the Revenue the order of the High Court is sought to be sustained for the reasons stated therein.

The question raised turns upon the true meaning of the provisions of s. 34 of the Act. It reads:

“When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it should have been so paid or deposited”.

The section itself makes a distinction between the amount awarded as compensation and the interest payable on the amount so awarded. The interest shall be paid on the amount awarded from the time the Collector takes possession until the amount is paid or deposited. To appreciate the scope of the section it is necessary to notice briefly the scope of an award and the manner in which possession is taken under the Act. After the statutory notifications are issued and the

requisite notice is given to the persons interested in the land so acquired, the Collector, after holding the necessary enquiry, makes an award, *inter alia*, determining the amount of compensation payable for the land so acquired. Section 15 of the Act says that in determining the amount of compensation the Collector shall be guided by the provisions contained in ss. 23 and 24. Section 23 provides for the matters to be considered in determining compensation; s. 24 describes the matters to be neglected in determining the compensation. A perusal of the provisions of s. 23 shows that interest is not an item included in the compensation for any of the matters mentioned therein; nor is it mentioned as a consideration for the acquisition of the land. Under cl. (2) of s. 23, the Legislature in express terms states that in addition to the market value of the land the court shall in every case award a sum of 15 per cent. of such market value in consideration of the compulsory nature of the acquisition. If interest on the amount of compensation determined under s. 23 is considered to be a part of the compensation or given consideration of the compulsory nature of the acquisition, the Legislature would have provided for it in s. 23 itself. But instead, payment of interest is provided for separately under s. 24 in Part V of the Act under the heading "Payment". It is so done, because interest pertains to the domain of payment after the compensation has been ascertained. It is a consideration paid either for the use of the money or forbearance from demanding it after it has fallen due. Therefore, the Act itself makes a clear distinction between the compensation payable for the land acquired and the interest payable on the compensation awarded.

1964

Dr. Sham Lal Narula
v.
Commissioner of
Income-Tax, Punjab

Subba Rao, J.

Another approach to the problem leads to the same result. Under s. 16 of the Act when the Collector has made an award under s. 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Under s. 17 thereof:

"In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste land or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances".

Under both the sections the land acquired vests absolutely in the Government after the Collector has taken possession—in one case after the making of the award and in the other, even

1964

Dr. Shamlal Narula

Commissioner of
Income-Tax, Punjab

Subba Rao, J.

before the making of the award. In either case, some time may lapse between the taking of possession of the acquired land by the Collector and the payment or deposit of the compensation to the person interested in the land acquired. As the land acquired vests absolutely in the Government only after the Collector has taken possession of it, no interest therein will be outstanding in the claimant after the taking of such possession: he is divested of his title to the land and his right to possession thereof, and both of them vest thereafter in the Government. Thereafter he will be entitled only to be paid compensation that has been or will be awarded to him. He will be entitled to compensation, though the ascertainment thereof may be postponed, from the date his title to the land and the right to possession thereof have been divested and vested in the Government. It is as it were that from that date the Government withheld the compensation amount which the claimant would be entitled to under the provisions of the Act. Therefore, a statutory liability has been imposed upon the Collector to pay interest on the amount awarded from the time of the taking possession until the amount is paid or deposited. This amount is not, therefore, compensation for the land acquired or for depriving the claimant of his right to possession, but is that paid to the claimant for the use of his money by the State. In this view there cannot be any difference in the legal position between a case where possession has been taken before and that where possession has been taken after the award, for in either case the title vests in the Government only after possession has been taken.

The Legislature expressly used the word "interest" with its well known connotation under s. 34 of the Act. It is, therefore, reasonable to give that expression the natural meaning it bears. There is an illuminating exposition of the expression "interest" by the House of Lords in *Westminster Bank, Ltd. v. Riches*⁽¹⁾. The question there was whether where in an action for recovery of any debt or damages the court exercises its discretionary power under a statute and orders that there shall be included in the sum for which the judgment is given interest on the debt or damages, the sum of interest so included is taxable under the Income-tax Acts. If the said amount was "interest of money" within Schedule D and the General Rule 21 of the All Schedules Rules of the Income Tax Act, 1918, income-tax was payable thereon. In that context it was contended that money awarded as damages for the detention of money was not interest and had not the quality of interest. Lord Wright observed:

"The general idea is that he is entitled to compensation for the deprivation. From that point of view

(¹) (1947) 28 T.C. 159, 189.

it would seem immaterial whether the money was due to him under a contract express or implied, or a statute, or whether the money was due for any other reason in law. In either case the money was due to him and was not paid or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute, as for instance under section 57 of the Bills of Exchange Act, 1882, or was unliquidated and claimable under the Act as in the present case. The essential quality of the claim for compensation is the same, and the compensation is properly described as interest".

1964
 Dr. Sham Lal Narula
 v.
 Commissioner of
 Income-Tax, Punjab
 Subba Rao, J.

This passage indicates that interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered, because he had not that use. It is something in addition to the capital amount, though it arises out of it. Under s. 34 of the Act when the Legislature designedly used the word "interest" in contradistinction to the amount awarded, we do not see any reason why the expression should not be given the natural meaning it bears.

The scheme of the Act and the express provisions thereof establish that the statutory interest payable under s. 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired.

We shall now proceed to consider the case law cited at the Bar. Where a Tribunal directed the Improvement Trust, under the provisions of s. 28 of the Land Acquisition Act, to pay interest to the assessee from the date of taking possession of the property to the date of payment, a Division Bench of the Allahabad High Court held, in *Behari Lal Bhargava v. Commissioner of Income-tax, C. P. and U. P.* ⁽¹⁾, that the interest so awarded was in the nature of compensation for the loss of the assessee's right to retain possession of the property acquired and, therefore, was no income liable to tax. The reason for the said conclusion is stated thus:

"It is not the "fruit of a tree"—to borrow the simile used in *Shaw Wallace's case* ⁽²⁾—but was compensation or damages for loss of the right to re-

⁽¹⁾ (1941) 9 I.T.R. 9, 24.

⁽²⁾ A.I.R. 1932 P.C. 138.

1964

Dr. Sham Lal Narula

v.

*Commissioner of
Income-Tax, Punjab**Subba Rao, J.*

tain possession; and it seems to us that Section 28 was designed as a convenient method of measuring such damages in terms of interest".

As we have pointed out earlier, as soon as the Collector has taken possession of the land either before or after the award the title absolutely vests in the Government and thereafter owner of the land so acquired ceases to have any title or right of possession to the land acquired. Under the award he gets compensation for both the rights. Therefore, the interest awarded under s. 28 of the Act, just like under s. 34 thereof, cannot be a compensation or damages for the loss of the right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner. Adverting to the said decision a Division Bench of the Madras High Court in *Commissioner of Income-tax, Madras v. CT. RM. N. Narayanan Chettiar*⁽¹⁾ observed:

".....with great respect we find ourselves unable to follow the reasoning. Certainly we are not prepared to accept the judgment as a guide to the decision in the present case".

So was the interest granted to an assessee under s. 18A of the Income-tax Act on the advance payment of tax by him under the provision of that section held to be income taxable in his hand: see *Commissioner of Income-tax, Bihar and Orissa v. Maharajadhiraj Sir Kameshwar Singh*⁽²⁾. There, when the decision of the Allahabad High Court in *Behari Lal Bhargava's case*⁽³⁾ was relied upon, the learned Judges, refusing to follow it, observed thus:

"It is not a matter of discussion for the Central Government but the duty to pay interest is imposed by statute. Apart from this I think (with great respect) that the Allahabad decision is of doubtful authority. The decision is not consistent with the principle laid down in *Schulze v. Bensted*⁽⁴⁾ and *Commissioners of Inland Revenue v. Barnato*⁽⁵⁾. The Madras High Court expressly declined to follow the Allahabad case in *Commissioner of Income-tax v. Narayanan Chettiar*⁽¹⁾."

The Kerala High Court in *P. V. Kuriien v. Commissioner of Income-tax, Kerala*⁽⁶⁾ held that interest paid on the enhanced amount of compensation directed to be paid by an appellate

(1) (1943) 11 I.T.R. 470, 477. (2) (1953) 23 I.T.R. 212, 225.

(3) 9 I.T.R. 9.

(4) (1915) 7 T.C. 30.

(5) (1934-36) 20 T.C. 455.

(6) (1962) 46 I.T.R. 288.

court in an appeal against an award of compensation for compulsory acquisition of land under the Land Acquisition Act represented capital and was not income liable to be taxed under the Indian Income-tax Act. It was argued there, as is argued before us, that the interest awarded was a capital sum estimated in terms of interest. In coming to the conclusion which they did, the learned Judges relied upon the decision of the Judicial Committee in *Inglewood Pulp and Paper Co., Ltd. v. New Burnswick Electric Power Commission*(¹) and that of the Madras High Court in *Revenue Divisional Officer, Trichinopoly v. Venkatarama Ayyar*(²). In the former, the Judicial Committee directed the purchaser who had taken delivery and possession of the property he had purchased before the sale to pay interest to the vendor on the purchase money from the date he had taken possession on the ground that "the right to receive interest takes the place of the right to retain possession and is within the rule"; and in the latter, though it arose under the Land Acquisition Act, possession was taken by the Government under circumstances falling outside the scope of ss. 16 and 17 of the said Act. In both the cases the title did not pass to the vendee in one case and to the State in the other when possession was taken by them and, therefore, it may be said that the owner was given interest in place of his right to retain possession of the property. But in a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under s. 16 or s. 17 of the Act. We, therefore, hold that the statutory interest paid under s. 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income-tax Act. The order of the High Court is, therefore, correct.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

1964

Dr. Shamlal Narula

v.

Commissioner of
Income-Tax, Punjab

Subba Rao, J.

(¹) A.I.R. 1928 P.C. 287.

(²) A.I.R. 1936 Mad. 199.