

P. Mariappa Gounder (Dead) By Lrs. vs Commissioner Of Income Tax, Madras on 21 January, 1998

Equivalent citations: 1998VIAD(SC)1, AIR1998SC2966, [1998]232ITR2(SC), JT1998(4)SC328, (1998)3SCC552, AIR 1998 SUPREME COURT 2966, 1998 AIR SCW 2816, 1998 (3) SCC 552, 1998 (2) UPTC 857, 1998 (6) ADSC 1, (1998) 4 JT 328 (SC), (1998) 9 SUPREME 145, (1998) 149 CURTAXREP 322, (1998) 146 TAXATION 151, (1998) 232 ITR 2

Bench: B.N. Kirpal, S.P. Kurdukar

ORDER

1. The question which arises for consideration in this appeal is as to in which assessment year is the appellant liable to be assessed in respect of mesne profits which were awarded in his favour. Briefly stated the facts, as found by the Tribunal, are that the appellant had agreed to purchase a tile factory vide written agreement dated 22-5-1950. When the vendor did not convey the property, as promised, the appellant filed a suit for specific performance. This suit was ultimately decreed in appeal by this Court vide its judgment dated 22-4-1958. In terms of this decree the appellant was required to deposit Rs 85,000 within 30 days of the decree and thereupon the title in the property was to be conveyed to the appellant. This Court also passed a decree declaring that the appellant was entitled to mesne profits against the respondent therein and in connection therewith the decree of this Court stated as follows: "AND THIS COURT DOTH ACCORDINGLY DIRECT that the trial court do hold an enquiry about the mesne profits, and such sums as may be found to be due on inquiry against the second and third respondents in respect of the mesne profits be deducted from the amount to be deposited in cash in the Court by the appellant aforesaid in accordance with clause (a) supra, and do direct the payment of the remaining amount, if any, to the third respondent who is the assignee of the second respondent pendente lite;"

2. It is not in dispute that the trial court went into the matter and determined the quantum of mesne profits by its order dated 22-12-1962 relevant to the Assessment Year 1963-64. The amount of mesne profits which was determined at Rs 57,093 was received by the appellant in the following accounting year relevant to the Assessment Year 1964-65.

3. The Income Tax Officer assessed this sum of Rs 57,093 in the appellant's Assessment Year 1963-64. On appeal, the Assistant Commissioner, however, deleted this amount as in his opinion the same could be taxed only in the year 1964-65. On further appeal the Tribunal came to the conclusion that this sum was taxable only in the Assessment Year 1963-64. Thereupon, at the instance of the assessee, the Tribunal referred the following two questions of law to the High Court of Madras:

"1. Whether the mesne profits decreed by the Supreme Court accrued to the assessee earlier to the accounting year relevant to Assessment Year 1963-64?"

2. Whether on the facts and in the circumstances of the case, the mesne profits received by the assessee is liable to be taxed in the Assessment Year 1964-65?"

4. The High Court, by its judgment under appeal, came to the conclusion that the mesne profits were rightly taxed in the Assessment Year 1963-64 and the same could not be taxed in the Assessment Year 1964-65. The aforesaid questions were answered accordingly.

5. It is contended by Shri Balakrishnan that the right to receive the mesne profits accrued to the appellant on 22-4-1958 when this Court decreed the suit of the appellant and held that he was entitled to receive the mesne profits. The learned counsel submits that as the right had accrued on that day, merely because the quantification of the same was postponed, it would not mean that the income accrued only at the time when the trial court computed the amount of mesne profits.

6. Shri Ahuja, learned counsel for the respondent, however, submitted that with the passing of the decree by this Court the appellant only got an inchoate right and his right to receive the mesne profits got ascertained only when the trial court had determined the amount on 22-12-1962.

7. In our opinion, the decision of the High Court does not call for any interference. It will be seen that under Order 20 Rule 12 of the CPC when the court passes a decree for possession and mesne profits by clause (ba) it may pass a decree "for mesne profits or directing an enquiry as to such mesne profits". In the present case, from the portion of the decree extracted hereinabove, it is clear that this Court passed an order directing an enquiry as to the mesne profits which would be payable by the judgment-debtor to the decree-holder. As on the day when this Court decreed the appellant's suit, there was only an inchoate right which arose in his favour. The trial court was directed to hold an enquiry and then to determine the amount of mesne profits which was payable.

8. The situation, in the present case, is similar where compensation is awarded and subsequently enhanced, on property being acquired under the provisions of the Land Acquisition Act. In *Khan Bahadur Ahmed Alladin & Sons v. CIT*, the High Court of Andhra Pradesh had to consider such a question. There the land was acquired in the year 1954 and additional compensation was paid as per court decree in 1956. The question arose whether this additional compensation was taxable in the year when the land was taken over or was taxable in the year when the decree was passed in 1956. Dealing with the question as to what was the income that could be said to have accrued to him on that date and which it could be assessed to tax, the High Court at p. 657 observed as follows:

"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 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)(6)(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 also 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 has 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 a 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."

9. The aforesaid passage was quoted with approval by this Court in C1T v. Hindustan Housing & Land Development Trust Ltd., in which case also this Court was called upon to deal with a question as to when was the additional compensation awarded liable to be taxed. In that case the amount of compensation awarded by the arbitrator was in dispute. On an appeal having been filed by the State Government it was held that the said amount could be taxed only when the dispute was resolved because if the appeal had been allowed in its entirety, the right of payment of enhanced compensation would have fallen altogether.

10. Applying the ratio of the aforesaid decisions, it appears to us that the decree dated 22-4-1958 passed by this Court only created an inchoate right in favour of the appellant. It is only when the trial court determined the amount of mesne profits that the right to receive the same accrued in favour of the appellant. In other words, the liability became ascertained only with the order of the trial court on 22-12-1962 and not earlier. Following the mercantile system of accounting the mesne profits awarded by order dated 22-12-1962 was rightly taxed in the Assessment Year 1963-64 and it was wholly irrelevant as to when the amount awarded was in fact realised by the assessee. In our opinion, therefore, the High Court was right in deciding the reference in favour of the Department. We accordingly dismiss the appeals but in the circumstances of this case award no costs.