# Commissioner Of Income-Tax Poona vs M/S. Manna Ramji & Co on 29 August, 1972

## Equivalent citations: 1973 AIR 515, 1973 SCR (1)1068, AIR 1973 SUPREME COURT 515, 1973 TAX. L. R. 362, 86 ITR 29, 1973 (1) ITJ 313, 1973 2 SCWR 119, 1973 3 SCC 43, 1973 SCC (TAX) 93, 1973 (1) SCR 1068, 1973 (1) SCJ 546

## Author: Hans Raj Khanna

## Bench: Hans Raj Khanna, K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:
COMMISSIONER OF INCOME-TAX POONA

Vs.

RESPONDENT:
M/s. MANNA RAMJI & CO.

DATE OF JUDGMENT29/08/1972

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1973 AIR 515 1973 SCR (1)1068
1973 SCC (3) 43
CITATOR INFO :
F 1976 SC 640 (12)
RF 1982 SC1153 (12)
R 1987 SC 500 (39)

ACT:
Indian Income Tax, 1911-Capital Receipts and Revenue Receipts--Compensation paid by Govt. for loss of earning where the business premises are requisitioned-Whether Revenue Receipts.

HEADNOTE:
The respondent was carrying on timber business in premises consisting of office room and six sheds, In 1944, the premises were requisitioned under the Defence of India Act

for storing food grains. On request of the respondent, however, the office room was released wherein the appellant continued to carry on the timber business. The respondent claimed compensation of Rs. 1,25,500 for loss of earnings which was awarded. The Income Tax Officer brought to tax the said amount attributing the earning to business of timber, as revenue receipts. On respondent's motion, the following question was referred to the High Court by the Income Tax Appellate Tribunal : "whether, on facts and circumstances of the case, the sum of Rs. 1,05,074 received by the applicant as compensation from the 'Government is taxable as income of the applicant or is a capital receipt in its hands." The High Court answered the question against the Revenue.

On appeal by the revenue,

HELD:On the facts found by the Tribunal, namely, that the compensation was claimed and awarded for loss of profits the respondent continued the said business in its usual name and style in the same office premises, and the profit making apparatus itself was not destroyed, the compensation amount partakes the character of profits and therefore Revenue receipts. [1072E]

Held further, the present is not a case wherein the respondent firm was permanently deprived of a source of income. On the contrary, the present is a case arising out of requisition of the premises. Requisition unlike acquisition, is of a temporary nature. The compensation paid to the respondent represents the supposed profit which the respondent would have earned during the years the premises remained tinder requisition.[1072G]

but which profit the respondent could not earn because of the requisition.

Commissioner of Income Tax/Excess Profits Tax, Bombay City v. Shamsher Printing Press, [1960] 39 I.T.R. 90., referred to.

Also held, the method of computing the compensation payable for loss of earnings does not alter the real character of essential nature of the receipt of the compensation in the hands of the respondent. The Arbitrator awarding the compensation on the basis of two years' purchases cannot be assailed. [1073E]

The Glembold Union Fireclay Co. Ltl. v. The Commissioner of Inland Revenue, 12 T.C, 427 and Senairan Doongarmall v. Commissioner of Income Tax, [1961] 42 I.T.R. 392 (on p. 397), relied upon.

Commissioner of Income Tax, Nagpur v. Rai Bahadur Jairam Vahi and Others [1959] 35 I.T.R. 148, S.R.Y. Sivaram Prasad Bahadur v. Commissioner of Income Tax, Andhra Pradesh, [1971] 82 I.L.R. 527 and Commissioner of Income Tax, Punjab Haryana, Jammu and Kashmir and Himachal Pradesh v. Prabhu Dayal [1971] 82 I.T.R. 804, held not applicable.

Karnani Properties, Ltd. v. Commissioner of Income Tax, West Bengal [1971] 82 I.T.R. 547, referred to.

The appeal was allowed,
1069

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 156 of 1969. Appeal by certificate from the judgment and order dated the 10th and 11th February, 1967 of the Bombay High Court in Income-tax Reference go. 35 of 1962.

B. B. Ahuja, R. N. Sachthey and S. P. Nayar, for the appellant.

R. M. Hajarnevis, S. Balakrishnan, G. P. Sahasrabhudhe and N. M. Ghatate, for the respondent.

The Judgment of the Court was delivered by Khanna, J. This appeal on certificate granted by the Bombay High Court is directed against the judgment of that court whereby it answered the question referred to it under section 66(1) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act) in favour of the respondent assessee.

The reference arose out of the assessment made upon the res- pondent firm for the assessment year 1951-52, the account year for which is the, Samvat year 2006 (that is, October 22, 1949 to November 9, 1950). The respondent was carrying on business for several years in the past in timber under the name and style of Manna Ramji & Co. in Bhavani Peth Poona City. The business premises consisted of an office and six sheds used for storing wood and timber of all kinds. The respondent firm constructed the six sheds for the purpose of its business after taking the site thereof on a long lease. On May 19, 1944 the Collector of Poona requisitioned the premises of the respondent under the Defence of India Act as from May 19, 1944 for the purpose of using them as store houses for food grains. Initially the requisition order covered the six sheds as well as the office of the respondent, but at the request of the respondent firm the Collector agreed to allow it to remain in possession of the office premises. In October, 1944 the respondent made a claim for Rs. 1,85,200 on account of compensation for the requisitioned premises. In June, 1946 the Collector offered referred to pay compensation at the rate of Rs. 310 per month. The respondent feeling dissatisfied with the offer of the Collector, moved the Government for a reference to arbitration under the provisions of the Defence of India Act. The Civil Judge, Senior Division, Poona was thereafter appointed arbitrator on November 10, 1947. The Government appointed its Consulting Surveyor as an assessor to help the arbitrator in determining the amount of compensation. As against that the respondent appointed an architect as its assessor. There was considerable difference in the estimates of the two assessors regarding the amount of compensation payable to the respondent.

The Civil Judge, who had been appointed arbitrator,, gave his award on April 15, 1948. The operative part of the award of the arbitrator was as under :

"The Government do pay compensation to the claimants as follows :

(1) Rs. 210/- per month for rent of the premises from the 15th May 1944 till the date of restoring the premises to the claimants. (2) A lump sum of Rs. 1,25,500/- for loss of earnings.

(3) A sum of Rs. 100/- in respect of the wooden frames.

(4) Interest at 3% on Rs. 1,25,500/- from the 15th November, 1944 till the date of actual payment."

The Government was also ordered to pay Rs. 2,000/- as costs to the respondent. The Government filed an appeal against the award of the arbitrator, but the same was dismissed by the High Court on August 7, 1949. The respondent was thereafter paid the amount of Rs. 1,70,330-10-0 in the Samvat year 2006. The above amount included Rs. 1,25,500 on account of lump sum for loss of earnings and Rs. 2,000 on account of costs of arbitration.

In computing the respondent's total income the Income Tax Officer brought to tax the two sums of Rs. 22,180/- on account of rent receipts and Rs. 20,551 on account of interest. Besides that. the Income Tax Officer brought to tax the sum of Rs. 1,50,074/under section 10 of the Act by attributing it to the respondent's business in timber. This figure of Rs. 1,05,074/- was arrived at by deducting out of Rs. 1,25,500 a sum of Rs. 20,426/ which, according to the Income Tax Officer, had been spent by the respondent in the claim proceedings against the Government over and above the amount of Rs. 2,000/- which had been awarded as costs by the arbitrator. The respondent feeling aggrieved by the finding of the Income Tax Officer that the sum of Rs. 1,05,074 was,business and taxable receipt filed appeal against the order of the Income Tax Officer. The Appellant Assistant Commissioner accepted the respondent's appeal and held that the above amount was capital receipt. On further appeal by the department, the Income Tax Appellate Tribunal held that the sum of Rs. 1,25,500 was a revenue receipt as it had been received on account of the loss of earnings of the timber business. The respondent was, however. allowed to set off the losses of Rs. 4,572 and Rs. 490, which bad been brought forward from the assessment years 1949-50 and 1950-51, against the sum of Rs. 1,05,074. On being moved by the respondent, the Tribunal referred the following question to the High Court "Whether, on the facts and in the circumstances of the case, the sum of Rs.

1,05,074/- received by the applicant as compensation from the Government is taxable as income of the applicant or is a capital receipt in its hands ?"

The High Court held that the amount received by the respondent for the requisitioning of the six sheds or godowns was in the nature of capital receipt in the hands of the respondent-firm for the damage sustained in the profit making apparatus. It was, in the opinion of the High Court, not a revenue receipt and as such, not taxable. In appeal Mr. Ahuja on behalf of the appellant has assailed the judgment of the High Court and has urged that the sum of Rs. 1,05,074 received by the respondent was a revenue receipt and not a capital receipt as the amount represented the compensation payable for loss of earnings consequent upon the requisition of the sheds of the respondent. As against that, Mr. Hajarnavis on behalf of the respondent

has urged that the amount in question was a capital receipt and the decision of the High Court in this respect was correct. In our opinion, the contention advanced on behalf of the appellant is well founded and that the sum in question represents a revenue receipt and not a capital receipt. In order to resolve the controversy as to whether the sum of Rs. 1,05,074 received by the respondent was a revenue receipt or a capital receipt, we must try to ascertain the true nature and character of the payment. Although the distinction between capital receipt and revenue receipt is well recognised, the task of assigning it to the appropriate head in border line cases is not free from difficulty and becomes one of such refinement. Decided cases can provide illustrations and afford indications of the kind of considerations which may relevantly be borne in mind in approaching the problem. In the final analysis, however, the controversy would have to be resolved in the light of the facts and circumstances of each individual case. It would, therefore, be ,relevant to look into the circumstances under which the payment was made. In this respect we find that after the sheds of the respondent had been requisitioned, the respondent commenced proceedings for claiming compensation. The Civil Judge Poona was appointed arbitrator to determine the amount of compensation. In the course of proceedings before the arbitrator, the respondent filed written statement claiming compensation, inter alia, for loss of profits. The arbitrator by his award dated April 15, 1948 awarded a sum of Rs. 1,25,500 for loss of earnings to the respondent. In addition to that we have the finding of the Tribunal that the respondent firm during the period for which the claim for compensation was made had been carrying on business in its usual name and style in the same office premises in which it used to carry on business prior to the requisition of the godowns by the Government. The effect of the requisition of the godowns, according to the Tribunal, was not to stop the business of the respondent. On the contrary, the respondent continued to carry on the business though at a reduced scale. The finding of the Tribunal in this respect was as under :

"As already pointed out, the office premises remained with the assessee firm and the business of disposing of the stock-in-trade continued to be directed from that place. Thus this was not a case of a business coming to a standstill altogether but it is a case of carrying on the same business on a smaller scale. Even this business was carried on by the assessee firm in its usual name and style from the same office premises from which it used to carry it on prior to the requisition of the godowns by the Government..... If any injury was caused to the assessee's business, including the capital assets it held for the purpose of carrying on that business, it was to the volumes of the business and not to the profit making apparatus itself."

In the light of the above findings of fact, we have no doubt that the amount received by the respondent for the loss of earnings was revenue receipt. It can hardly be disputed that if the respondent firm had been earning profits as a result of its business during the years the premises in question remained under requisition, the said profit would have been treated as revenue receipt and liable to be taxed as such. The amount received in lieu of the profits which would have been earned if the premises had not been requisitioned, in our opinion, would partake of the same character as

the profits. The present is not a case wherein the respondent firm was permanently deprived of a source of income. On the contrary, the present is a case arising out of requisition of the premises. Requisition, unlike acquisition, is of a temporary nature and though it may extend over some years, it has not the element of perma- nence. The compensation' paid to the respondent represents the supposed profit which the respondent would have earned during the years the premises remained under requisition but which profit the respondent could not earn because of the requisitions.

A case somewhat similar to the present case is Commissioner of Income Tax/Excess Profits Tax, Bombay City v. Shamsher Printing Press(1). The respondent firm in that case had for the purpose of its business a printing press. The premises in which he press was housed were requisitioned by the Govermnent and the respondent had to shift its business to another place. Of the various sums paid as compensation for the requisition, the Government paid Rs. 57,435 towards the claim of the respondent "on account of the compulsory vacation of the premises, disturbance and loss of business". It was held by this Court that the sum of Rs. 57,434 had not been received by the respondent for any injury to its capital assets, including goodwill. The above sum, it was further held, had been received as compensation for loss of profit and was a revenue receipt liable to tax. Reference has been made by Mr. Hajarnavis to the observations in the award of the arbitrator regarding the manner of computing the compensations payable to the respondent for the loss of earning. The arbitrator in this connection took the view that the amount of two years purchase made by the respondent would be the most equitable and fair figure for determining the amount of compensation. The lump sum payable to the respondent for loss of earning was thus found to be Rs. 1,25,500. The important thing to note is that the above sum was paid to the respondent on account of loss of earning. The method of computing the cornpensation payable for the loss of earning would not in our opinion, alter the real character or the essential nature of the receipt of the said compensation in the hand of the respondent, As observed by Lord Buckmaster in the case of The Glennboig Union Fireclay Co. Ltd. v. The Commissioners of Inland Revenue (2 ) "there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test". The above observation was quoted with approval by this Court in the case of Sonairam Doongermall v. Commissioner of Income Tax(3) and it was held that it is the quality of payment that is decisive of the character of the payment and not the method of the payment or its measure as makes it fall within capital or revenue.

Reliance has been placed by Mr. Hajarnavis on the ratio of the decision of this Court in the case of Senairam Doongarmall (supra). The assessee family in that case owned a tea estate consisting of tea gardens, factories and other buildings and carried on the business of growing and manufacturing tea. The factory and other buildings on the estate were requisitioned for defence purposes by military authorities. Though the assessee continued in possession of the tea gardens and tended them to preserve the plants, the manufacture of tea was stopped completely. The (1) [1960] 39 I. T. R. 90.

(2) 12 T. C. 427.

19-LI72Sup.CI/73, (3) [1961] 42 I. T. R. 392, 387.

assessee was paid compensation for the years 1944 and 1945 under the Defence of India Rules, calculated on the basis of the out-turn of tea that would have been manufactured by the assessee during that period. This Court held that the amount of compensation received by the assessee was not revenue receipt and did not comprise any element of income. In arriving at that conclusion, the Court took note of the fact that tax was payable by an assessee under the head "Profits and gains of a business" in respect of a business carried on by him. As the assessee had not carried on any business at all, the compensation received by the assessee was held to be not profit of business. This case, in our opinion, cannot be of much help to the respondent because in the present case, as observed earlier, the Tribunal has expressly found that the respondent was carrying on the business during the relevant years.

Reliance has also been placed by Mr. Hajarnavis upon the decision of House of Lords in the case of The Glenboig Union Fireclay Co. Ltd. (supra). The assessee in that case was carrying on business for the manufacture of fireclay goods and had taken in connection with that business a fireclay field on lease, over part of which ran the lines of the Caledonian Railway. The railway administration prohibited the assessee from excavating the field within a certain distance of the rails and paid compensation therefor in accordance with the provisions of a statute. It was held by the House, of Lords that this was a capital receipt as the compensation was really the price paid "for sterlising the assets from which otherwise profit might have been obtained". It would follow from the above that the fireclay field was accepted to be a capital asset which was to be utilised for the carrying on of the business of manufacturing fireclay goods. When the assessee was prohi- bited from exploiting the field, it was considered to be an injury inflicted on his capital asset. The case of The Glenboig Union Fireclay Co. Ltd. (supra) was cited before this Court in Commissioner of Income Tax, Nagpur v. Rai Bahadur Jairam Valji and Others(1) and Senairam Doongarmall (supra) and was distinguished on the ground that it related to the sterlisation and destruction of a capital asset. In the present case there has been no sterlization and destruction of the capital asset of the respondent firm. As such, the case of The Glenboig Union Fireclay Co. Ltd. cannot afford much assistance in the present case. Reference has also been made by Mr. Hajarnavis to the cases of S. R. Y. Sivaram Prasad Bahadur v. Commissioner of Income Tax, Andhra Pradesh (2 ) and Commissioner of Income Tax. Punjab,, Haryana, Jammu & Kashmir and Himachal Pradesh v. Prabhu Dayal(3). Sivaram Prasad Bahadur's case related to (1) [1959] 35 I. T. R. 148.

(2) [1971] 82 I. T. R. 527.

(3) [1971] 82 I. T. R. 604.

interim payments made under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 to a former holder of an estate which had been abolished during the period between the taking over of the estate, and the final determination and deposit of compensation under that Act. It was held to be a capital receipt and not liable to tax. Prabhu Dayal's case related to an assessee who had discovered by chance the existence of kankar in the Jind State. The assessee, brought about an agreement between the State and one Shanti Prasad Jain for the acquisition of sole and exclusive monopoly rights for manufacturing cement. Shanti Prasad Jain transferred his rights under the agreement to a company of which the assessee was one of the promoters. For the services rendered

by him, the company agreed to pay the assessee a commission of 1 per cent on the yearly net profits earned by the company. The agreement was acted upon till 1950 whereafter the company did not pay the commission to the assessee. The assessee filed a suit which ended in a compromise. In terms of the compromise, the assessee was paid certain amounts as commission for the years 1951, 1952 and 1953 and a further sum of Rs. 70,000 by way of compensation for the determination of the agreement between him and the company as from January 1, 1954. Question which arose for determination was whether the sum of Rs. 70,000 was capital receipt in the hand of the assessee. The assessee, it was found, had not engaged either in the business of discovering kankar or any minerals or in the business of bringing about agreement between the parties. There was, indeed, no evidence that he was a business man. It was held that none (if the activities of the assessee could be considered to be business activity. The compromise, in the opinion of this Court, destroyed an income yielding asset of the assessee and in its place he , was given Rs. 70,000 as compensation. The sum of Rs. 70,000 was accordingly held to be capital receipt. It is manifest from the narration of the facts of Sivaram Prosad Bahadur and Prabhu Dayal's cases that there is no similarity between those cases and the present case. As such, these two decisions cannot be of any avail to the respondent. It may also be mentioned that Mr. Hajarnavis has assailed the findings of fact of the Tribunal. In this respect we are of the view that the Tribunal is the final fact finding authority. It is for the Tribunal to find facts and it is for the High Court and this Court to lay down the law applicable to the facts found. Neither the High Court nor this Court has jurisdiction to go behind or to question the statement of facts made by the Tribunal. The statement of case is binding on the parties and they are not entitled to go behind the facts of the Tribunal in the statement. When the question referred to the High Court speaks of "on the facts and circumstances of the case", it means on the facts and circumstances found by the Tribunal and not on the facts and circumstances as may be found by the High Court (see Karnani Properties Ltd. v. Commissioner of Income Tax, West Bengal(1). As a result of the above, we accept the appeal, set aside the judgment of the High Court and answer the question referred by the Tribunal in favour of the department. In our opinion, the sum of Rs. 1,05,074 received by the respondent as compensation from the Government was taxable as income of the respondent and was not a capital receipt. In the circumstances of the case, we leave the parties to bear their own costs of this Court as well as in the High Court.

S.B.W. Appeal allowed.

(1) [1971] 82 I. T. R. 547.