S. R. Y. Sivaram Prasad Bahadur vs The Commissioner Of Income Tax ... on 19 August, 1971

Equivalent citations: 1972 AIR 260, 1972 SCR (1) 220, AIR 1972 SUPREME COURT 260

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover

PETITIONER:
S. R. Y. SIVARAM PRASAD BAHADUR

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX HYDERABAD

DATE OF JUDGMENT19/08/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 260 1972 SCR (1) 220
1971 SCC (3) 726
CITATOR INFO :
RF 1973 SC 515 (10)
E&R 1992 SC1495 (13,16,19,29,30)

ACT:
Income-Tax-Capital and Revenue-Interim payment received under s. 50(2) of Madras Estates (Abolition of Conversion into Ryotwari) Act, 28 of 1948 whether capital receipt-Whether in lieu of interest on compensation.

HEADNOTE:
The assessee was a Hindu Undivided Family. Its estate vested in the State Government of Madras under the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948. It received interim payments under s. 50(2) of the Act. The question in the Income-tax proceedings was whether the payment so received was a capital or a revenue receipt. The

Income-tax Officer and the Appellate Assistant Commissioner held that it was revenue. The Tribunal held that the payments were made to the assessee as compensation for destroying its income producing assets and therefore must be considered as capital receipts. The High Court decided that question in favour of the Department.. The assessee appealed to this Court by certificate.

HELD:While it is true that the terminology used by the legislature in respect of a payment is not conclusive of the true character of the payment, it would be proper to proceed on the basis that the legislature knew what it was saying. The word compensation must be given its normal and natural meaning. In cl. (e) of s. (3) of the Act the legislature definitely says that the holder or holders of the Estate falling within cl. (b) and (c) of s. 3 "shall be entitled only to compensation from the Government as provided in this Act". From this it follows that all payments made to them under the Act are compensation payable to them for taking over their Estates. [325 D-F]

Moreover the final determination of the compensation under s. 39 was made years after the Estate vested in the Government, though some advance compensation was paid. Hence there was force in the contention of the assessee that the interim payments made were given as compensation for depriving the assessees of the income that they would have got from their agricultural lands, which income would not have been assessable to tax under the Act. The quantum of interim payments payable to the former holders of those estates was determined by taking into consideration the income that the former owners would have received had they continued to be the owner of those Estates. This prima facie showed that the Government was compensating the former holders for taking away their income producing assets. [325 H-326 C].

The contention that the interim payment was in lieu of interest on the compensation payable overlooked the fact that the liability of the Government to pay the compensation excepting to the extent provided in s. 54A arose only after the compensation payable was finally determined under s. 39. The interim payments were not fixed on the basis of esti-mated compensation. They were fixed on the basis of loss of income to the former owners. Under these circumstances it was not possible to accept the contention that the interim payments were paid in lieu of interest or even that they represented compensation for loss of interest (326 D-E)

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Sub-section (8) of s. 50 instead of assisting the Department supports the case of the assessee. AR that the provision says is that the interim payments made under s. 50(2) are not to be considered as compensation which the Government is required to deposit under s. 41(1) or to any extent 8 to be in lieu of such compensation. That section does not say that the interim payments are not

compensation. It only says that it is no part of the compensation required to be deposited under s., 41 or to any extent in lieu of compensation. That does not mean that it cannot be compensation for the recurring loss caused to the owner because of the taking away of an income producing asset without payment of compensation. [327 D-E]

Dr. Sham Lal v. Commissioner of Income-tax, Punjab, 53 I.T.R. 151, Senairam Doongarmall v. Commissioner of Income Tax, Assam, 42 I.T.R. 392 and Simpson (H.M. Inspector of Taxes) v. Executors of Bonner Maurice as, Executor of Edward Kay, (1929) 14 T.C. 580, relied on.

Raja Rameshwara Rao v. Commissioner of Income-tax, Hyderabad, [1964] 2 S.C. R. 847 and Chandroji Rao v. Commissioner of Income-tax, Madhya Pradesh, 77 I.T.R. 743, distinguished,

Kumara Rajah of Venkatagiri & Ors. v. Income-tax Officer, A-Ward, Nellore & Ors. 64 I.T.R. 264, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1309 to 1312 of 1968.

Appeals from the judgment and order dated August 2, 1967 of the Andhra Pradesh High Court in Case Referred No. 35 of 1963; and Civil Appeals Nos. 1257, 1260, 1262, 1313, 1314 and 1374 Of 1968.

Appeals from the judgment and order dated August 2, 1967 of the Andhra Pradesh High Court in Writ Appeals Nos. 34 of 1966 etc. etc. Vedantha Chari, K. C. Rajappa and A. Subba Rao, for the appellant (in C.As. Nos. 1409 to 1312 of 1968). B.Sen, P. L. luneja, R. N. Sachthey and B. D. Sharma, for the respondent (in C.As. Nos. 1309 to 1312 of 1968). V. Vedantha Chari, K. C. Rajappa, K. Rajendra Chawdhary and Hari Singh, for the appellants (in C.As. Nos. 1257, 1260, 1262, 1313, 1314 and 1374 of 1968).

R. N. Sachthey, for the respondents (in C.As. Nos. 1257, 1260, 1262, 1313 and 1314 and 1374 of 1968). P. Ram Reddy, T. A. Ramachandran and A. V. Nair, for the interveners.

The Judgment of the Court was delivered by Hegde, J. The common question of law which arises for decision in these appeals by certificate, is whether the interim payment received by a former holder of an estate under S. 50(2) 3 22 of the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948 (Madras Act 26 of 1948) (to be hereinafter referred to as 'the Act') whose Estate vested in the Government under s. 3 of the Act was of capital nature and not liable to tax.

The material facts bearing on the point in issue are identical in all these appeals. Hence it would be sufficient if we set out the facts of Civil Appeals Nos. 1309 to 1312 of 1968 which were filed by the same assessee. The assessee in those appeals is a Hindu Undivided Family and that family was the holder of the Estate of Devarkota and Challappalli. This Estate vested in the Government under the Act. During the assessment years 1953-54, 1954- 55, 1956-57 and 1958-59, the assessee received

some interim payments. The Income-tax Officer sought to include those payments in' the assessment of the assessee in those years. The assesses contended that those receipts were not Revenue receipts and hence not taxable. He based his plea firstly on the ground that those receipts represented agricultural income or alternatively they were capital receipts and lastly on the ground that the income having been apportioned among the principal landholder and the other persons referred to in subs. (2) of s. 50 of the Act, the entire amount did not fall to be assessed in his hands. All these contentions were rejected by the Income-tax Officer. Before the Appellate Assistant Commissioner, the assessee repeated those contentions; but the Appellate Assistant Commissioner rejected them and upheld the order of the Income-tax Officer. On a further appeal to the Income-tax Appellate Tribunal, the Tribunal held that as those payments were made to the assessee as compensation for destroying his income producing assets they should be considered as capital receipts and hence not liable to be taxed. Thereafter, at the instance of the Commissioner of income-tax, the Tribunal referred the question-

> "Where on_the facts and in the circumstances of the case, the interim compensation of Rs. 80,843; Rs. 40,422, Rs. 1,21,146 and Rs. 80,391 received by the assessee under section 50 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 was of a capital nature and not liable to tax."

under S. 66(1) of the Act for the opinion of the High Court. The High Court answered that question in favour of the Department. Following that decision, the High Court dismissed the Writ Petitions filed by Shri V. V. V. R. K. Yachendra Kumar Raja raising the very question that was the subject matter of the References. The other appeals in this batch of appeals arise from the decision in those Writ Petitions.

For deciding the question whether the receipts with which we are concerned in these appeals are capital receipts, it is necessary to make a survey of the relevant provisions of the Act. But before doing so, it is necessary to mention that the former holders of Estates that had vested in the Government under the Act were entitled to receive four different kinds of payments. They are: (1) advance compensation under s. 54-A; (2) interim payments under s. 50(2); (3) total compensation under s. 41; and (4) additional compensation under s. 54-B. Now let us turn to the relevant provisions of the Act.

Section 3 of the Act provides in cl. (b) thereof that the entire Estate, including all interests detailed therein, shall stand transferred to the Government and vest in them free from all encumbrances with effect on and from the notified date. Clause , (c) of that section put an end to all rights and interests created in or over the Estate before the notified date by the principal or any other landholder. Clause (e) of that section is important. It reads :

> "That principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine, under clause (c), shall be entitled only to compensation from the Government as provided in this Act."

Section 21 provides for the survey and settlement of Estates for effecting Ryotwari settlement. The manner of effecting the Ryotwari Settlement of the Estate vested in the Government is prescribed in sub-sections 2, 3, and 4 of s.

22. Sections 24 to 27 prescribe the manner of determining the compensation payable for the Estates taken over. The scale of compensation is laid down in s. 37. Section 39 provides for determination of basic annual sum and of total compensation. Section 4 lays down that the Government shall deposit in the office of 'the Tribunal, the amount of compensation in respect of each Estate as finally determined under s. 39, in such form and manner and at such time or times and in one or more installments as may be prescribed by the rules made under s. 40. Then, we come to s. 50. Two clauses of that section relevant for our present purpose are: sub-section (2) and (8) of that section. Sub-section (2) says:

> "After the notified date and until the compensation is finally determined and deposited in pursuance of this Act, interim payments shall be, made by the Government every fasli year prior to the fasli year in which the said deposit is made, to the principal landholder and to the other persons referred to in section 44, sub-section (1), as follows.....
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> Sub-section (8) of s. 50 reads :
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> "No interim payment made under this section shall be deemed to constitute any part of the compensation which the Government are liable to deposit under section 41, subsection (1), or to any extent to be in lieu of such compensation."

Section 54-A provides for advance payment of compensation and its apportionment etc. That section provides that "in the case of every estate not governed by section 38, the Government shall estimate roughly the amount of the compensation payable in respect of the estate, and deposit one-half of that amount within six months from the notified date in the office of the Tribunal, as advance payment on account of compensation."

Section 54-B, provides for the payment of additional com- pensation and its apportionment. Evidently the Government had estimated the total compensation payable to the holders of all Estates that vested in it at 12-1/2 crores of rupees. Section 54-B provides that if the total compensation paid to the holders falls short of that sum, the balance will be distributed between the holders of the Estates abolished, in proportion to the amount of compensation as finally determined in respect of each of them under s. 39. The only other provision to which reference may be made is sub- section (7) of s. 50 which in one of its clauses provides for payment of interest under certain circumstances. From the provisions of the Act, it is clear that the legislature must have been satisfied that the enquiries relating to the determination of the compensation of the Estates abolished was bound to take considerable time. In the very nature of things, those enquiries were bound to be prolonged. We have earlier seen that the Estates abolished vested in the Government as soon as the notification contemplated in section 3 was issued. But the compensation payable to the Estate holders became due only when the same was finally determined under section 39. In other

words, the liability of the Government to pay the compensation finally determined arose only after the same was determined under s. 39 though the Act provided for payment of half the amount of compensation on the basis of a rough estimate within six months from the date of vesting. It may \also be noted that there is no provision in the Act providing for payment of interest on the compensation payable as from the date of vesting.

Now we shall proceed to consider the question whether the interim payments made under the Act under s. 50(2) are reve- nue receipts or capital receipts. It was urged on behalf of the assessee that those receipts were capital receipts. In support Of that contention, reliance was placed on clause

(e) of section 3 as well as on the circumstance that though the Estate abolished vested in the Government on the notified date, compensation became payable to them only after the same was determined under s. 39. On the other hand, it was urged on behalf of the Department that the legislature deliberately made a distinction between the compensation and interim payment; the compensation for abolished Estate were firstly paid as advance compensation, neatly as total compensation and-lastly as additional com- pensation; the interim payments had nothing to do with com- pensation; they were recurring payments and they were made in lieu of the interest payable on the total compensation- While it is true that the terminology used by the legislature in respect of a payment is not conclusive of the true character of that payment, it would be proper to proceed on the basis that the legislature knew what it was saying. The word 'compensation' is a well known expression in law. When the legislature says that all payments made under the Act are in respect of the compensation payable to the former holders, unless there are clear and convincing circumstances to show that one or more items of payment do not form part of the compensation payable, we must hold that those payments are what they are said to be by the statute. We must give the word "compensation" its normal and natural meaning. As seen earlier, in clause (e) of section 3 of the Act the legislature definitely says that the holder or holders of the Estate failing within clauses (b) and (c) of section 3 "shall be entitled only to compensation from the Government as provided in this Act". From this it follows that all payments made to them under the Act are compensation payable to them for taking over their Estates Statutes which take away others property, by and large, provide for payment of compensation as from the date of taking. In the generality of those statutes, if immediate payment is not made at the time of taking, provision is made for payment of interest on the compensation payable as from the date of taking. In the Act, there is no provision for payment of compensation at the time of the vesting of the Estates in the Government. Nor is there any provision for payment of interest on the compensation payable, as from the date of taking. The compensation determined has to be deposited only after the enquiry under s. 39 was over. We are told at the bar that the final determination of the compensation under s. 39 was made years after the Estate vested in the Government, though some advance compensation was paid. Hence there is 3 26 force in the contention advanced on behalf of the assessee that the interim payments made were given as compensation for depriving the assessees of the income that they would have got from their agricultural lands, an income which would not have been assessable to tax under the Act if it had been received as agricultural income. The quantum of interim payments payable to the former holders of those Estates was determined by taking into consideration the income that the former owners would have received had they continued to be the owners of those Estates. This prima facie shows that the Government was compensating the former holders for taking away their income

producing assets. The interim payments do not appear to have any relationship with the compensation ultimately payable. On the other hand, it takes note of the loss of income incurred by the former owners due to the abolition of the Estates. The contention that it was in lieu of interest on the compensation payable overlooks the fact that the liability of the Government to pay the compensation excepting to the extent provided in section 54-A, arose only after the compensation payable was finally determined under s. 39. The interim payments were not fixed on the basis of the estimated compensation. They were fixed on the basis of the loss of income to the former owners. Under these circumstances, it is not possible to accept the contention-that interim payments were paid in lieu of interest or even that they represented compensation for loss of interest. If the legislature intended that the interim payments were to be mad-, in lieu of the payment of interest on the compensation payable, nothing would have been easier than to say so in the Act. The term 'interest' is a familiar term in law. In this very Act, the legislature had prescribed payment of interest under certain circumstances. As observed by this Court in Dr. Sham Lal v. Commissioner of Income-tax, Punjab(,'), the interest is a payment to be made by the debtor to the creditor when money was due to the creditor but was not paid or in other words was withheld from the creditor by the debtor after the time when the payment should have been made. Proceeding further, this Court observed in that case that interest whether it was statutory or contractual represented the profit the creditor would have made if he had the use of the money to which he was entitled to. In the cases before us, the assessees were not entitled to any compensation till the same was determined under s. 39. Therefore, no amount, to which they were entitled to. were, withheld from them. Hence on that account they were not entitled to any compensation in lieu of interest.

It is true that while the Act calls the payments made under S. 54-A, 54-B and 41. as compensation, the payments made under

53. I.T.R. p. 151 section 50(2) is called interim payments. This circumstance by itself will not be of much significance because, as seen earlier, s. 3 proceeds on the basis that all payments made under the Act are in the nature of compensation. Possibly the legislature wanted to make a distinction between compensation paid for the loss of income and that for the loss of assets. Much reliance was placed on behalf of the Department on sub-section (8) of s. 50 which as seen earlier, says "No interim payment made under this section shall be deemed to constitute any part of the compensation which the Government are liable to deposit under section 41, sub-section (1), or to any extent to be in lieu of such compensation."

In our opinion, this sub-section, instead of assisting the Department, support the case of the assessees. All that provision says is that the interim payments made under s. 50(2) are not to be considered as compensation which the Government is required to deposit under s. 41 (1) or to any extent to be in lieu of such compensation. That section does not say that the interim payments are not compensation. It only says that it is no part of the compensation required to be deposited under s. 41 or in lieu of such compensation. That does not mean that it cannot be compensation for the recurring loss caused to the owner because of the taking away of an income producing asset without payment of compensation. It is not the contention of the assessees that the interim payments made are part of the total com- pensation payable for the acquisition of the Estates. According to them, it is a compensation for the destruction or taking away of an income producing asset of theirs till the

assets taken from them are compensated. Now we shall proceed to consider the decided cases. We shall first take up the cases relied on by the appellants. The appellants placed great deal of reliance on the decision of the Madras High Court in Shanmugha Rajeswara Sethupathi v. Income-tax Officer,- Karakudi. (1) The question that arose for decision therein was the very question that we are considering in these appeals. As a result of Madras amendment after Reorganization of States on November 1, 1956, cl. (e) of s. 3 as in force in Madras reads "The principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act."

(1)44, I.T. R. p.853 Despite this change the Madras High Court came to the conclusion that an interim payment made under section 50(2) was compensation and as such was a capital receipt. The same view was taken by the Madras High Court in M., S. Chockalinga Chettiar and Ors. v.

Navaneethakrishna Sivasubramania Hirudalaya Marudappa Pandayan- and Ors. (1) as well as in Ramachandran v. A. N. Krishnamoorthy Iyer.(2) The Andhra Pradesh High, Court has taken a contrary view in the judgments under appeal and in another judgment to which we shall refer presently.

In Senairam Doongarmall v. Commissioner of Income-tax, Assam(1) this Court was called upon to consider the nature of the payment made to the assessee which owned a tea estate consisting of tea gardens, factories and other buildings, for the purpose of growing and manufacturing tea. The factory an d other buildings on the estate were requisitioned for defence purposes by the military authorities. The 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. The question was whether the amounts of compensation were revenue receipts taxable in the hands of the assessee. The Court held that the receipts were capital receipts and hence not liable to be taxed. It is true that in that case the question for decision was whether the assessees carried on business or not in the years 1944 and 1945 and not whether the.

receipts in question were taxable in come. But all the same, some of the observations made therein are of assistance in deciding the point in issue in these appeals. In that case this Court ruled that the amounts of compensation received by the assessee were not revenue receipts and did not comprise any element of income. In the course of the judgment Mr. Justice Hidayatullah, J. (as he then was) speaking for the Court observed :

> "The compensation which was paid in the two years was no doubt paid as an equivalent of the likely profits in those years; but, as pointed out by Lord Buckmaster in Glenbig Union Fireclay Co. Ltd. v. Commissioner of Inland Revenue and affirmed by Lord Macmillan in Van den Berghs Ltd. v. Clark :
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> "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."

(1) [1964] 1, Madras Law Journal p. 340;

(2) [1964] 1, Madras Law Journal p. 153;

(3) 42, I.T.R. P. 392 This proposition is as sound as it is well- expressed, and has been followed in numerous cases under the Indian Income-tax Act and also by this Court. It is quality of the payment that is decisive of the characters of the payment and not the method of the payment or its measure, and makes it fall within capital or revenue."

Again at pages 407 and 408 of the Report, the learned Judge observed :

> "Now, when the payment was made to compensate the assessee, no doubt the measure was the out-
>
> turn of tea which would have been manufactured; but that has little relevance. The assessee was not compensated for loss or destruction of or injury to a capital asset. The buildings were taken for the time being, but the injury was not so much to the fixed capital as to the business as a whole."

Now reference may be made to some of the observations of Rowlatt J. in Simpson (H.M. Inspector of Taxes) v. Executors of Bonner Maurice as Executor of Edward Kay(1). In that case a naturalised British subject had at various dates deposited securities, stocks and shares in banks in Germany. He died during the war. After the peace Treaty was signed claims of his representatives were admited by the Mixed Arbitral Tribunal in I respect of amounts representing partly capital of securities realised by sale or redemption, partly interest and dividends and interest thereon, partly compensation under the Treaty computed on the basis of interest on certain amounts. The question was whether the com- pensation computed on the basis of interest was not income for the purposes of income-tax. The award of the Tribunal was made in respect of these claims and part of the compensation was a sum calculated on the basis of interest in respect of funds consisting of dividends which had been held as an alien property under the German law. Dealing with the question whether the compensation computed on the basis of interest was or was not income for the purposes of income-tax, the learned judge observed :

> "The question is whether it is income at all. It is called compensation, but the mere word in the Award, CC compensation", does not decide the matter, one must look at the substance of what it was, and if it is annual profits and gains or income..... arising from a foreign possession, then it is to be taxed. The foreign Possession must have been the fund in the hands of the Treuhander, and the Crown's case is that this has been (1)[1929] 14, T.C. 580.

3 3 0 transmuted into sterling at the pre-war rate Of exchange and awarded with, annual interest ab initio. The Treuhander did not receive this money subject to any liability to hold it at interest. No doubt the German law recognised it as remaining the property of Mr. Kay, but not so as to bear interest. The treaty did not give Mr. Kay any right to interest, nor did it declare the Treuhander a

trustee so as to found any consequential claim for interest; it did not empower the Tribunal to give interest as such, or to make any declaration as to the character of the purpose for which the Treuhander had held the money. The Treaty gave compensation, and the tribunal which assessed the principal sum has assessed it on the basis of the interest. I think this sum first came into existence by the Award, and no previous history or anterior character can be attributed to it. It is exactly like damages for detention of a chattel and unless it can be said that damages for detention of a chattel can be called rent or hire, for the chattel during ,the period of detention, I do not think this compensation can be called interest. I therefore think the Crown fails on this point."

In the appeal court Lord Hanworth, M. R. while confirming the judgment of Rowlatt J., observed "The duty to pay compensation was imposed upon them by the Treaty. The Statute does not apply it, and the root of the payment is the duty to pay compensation..... For withholding this sum, for preventing Mr. Kay, or his executors, exercising the power of disposition over his property, the Germans have been compelled to pay compensation. The way to estimate that compensation or damages-the sensible way no doubt-would be by calculating a sum in terms of what interest it would have earned. That has been done, but the sum that was paid has not been turned into interest so as to attach Income-tax to it. It remains compensation and, for these reasons, it appears to me that it is not a sum which attracts or attaches Income Tax to The above observations undoubtedly support the case of the appellants.

On the side of the Department reliance was placed on the decision of this Court in Raja Ranuuhwara Rao v. Commissioner of Income-tax. Hyderabad.(1) Therein this Court was called (1)[1964] 2, S.C.R. 847.

33 1 upon to decide the nature of the payment made under s. 14 of The Hyderabad, (Abolition of Jagirs) Regulation, 1358F under which the management of Estates was taken over. Section 14 of that Regulation provided that the amount payable to Jagirdars and Hissedars under that Regulation "shall -be deemed to be interim maintenance allowances payable until such time as the terms for the commutation of Jagirs are determined". Section 3 of The Hyderabad Jagirs (Commutation) Regulation, 1359F laid down that commutation sum for a Jagir would be a certain multiple, of its basic annual revenue. Section 6 of that Regulation provided that the commutation sum for each Jagir would be distributable between the Jagirdar and Hissedars in certain proportions. Subsection (2) of s. 7 of that Regulation stated that payment to a Jagirdar of the commutation sum of the Jagir shall constitute the final commutation as from the 1st April 1950 of his rights in the Jagir and if any payment by way of, an interim maintenance allowance under the said Regulation, that is', the former Regulation, is made in respect of a period subsequent to the said date, the amount of such payment shall be recovered from the recipient thereof by deduction from his share in the, commutation sum for the Jagir. On an interpretation of s. 14 of the Regulation of 1358 F, this Court held that the interim maintenance allowances paid under that section were revenue receipts on which income-tax can be imposed. Some of the observations found in that judgment undoubtedly support the case of the Department. But we must see under what circumstances those observations were made. In order to understand the ratio of that decision, we must bear in mind the provisions of the two Regulations referred to hereinbefore. The first Regulation provided for the taking over of the management of the Estates and the second Regulation prescribed the mode of determining the

commutation sum in respect of each jagir and for its payment. The character of the receipt which this Court was called upon to consider was the maintenance allowance paid under s. 14 of the first of the two Regulations. Under that Regulation, the Administrator of Jagirs took over the management of the Estates pending making provision for determination of the commutation amount. Provision in that regard was made under the second Regulation. Till the pay- ment of the commutation sum, the Administrator merely managed ,the Estates on behalf of the former owners of those Estates. This is clear from ss. 5, 8, 11, 12, 13 and 14 of the first Regulation. Under s. 5 thereof the quantum Jagirdars were required to hand over the possession of their Estates to the Jagir Administrator. Section 8 required the former Jagirdars to pay to the Government ,the administration expenses of their Estates. Section 11 provided for distribution of net income of an Estate between the Jagirdar and his Hissedars who were entitled to a share in the income of the Estate. Section 12(1) says "From the amount payable to any person under section 11, there shall be deducted the amount of any maintenance allowance which under subsection (2) is debitable to the share of that person."

Section 13 required the Jagir Administrator to maintain separate account in respect of each Jagir and afford the concerned Jagirdar and Hissedar reasonable facilities for the inspection of the same. Section 14 reads :

> "The amounts payable to Jagirdars and Hissedars under the Regulation shall be deemed to be interim maintenance allowances payable until such time as the terms for the commutation of jagirs are determined."

It is the character of the payments made under s. 14 that came up for consideration before this Court in Rameshwar Rao's case(1). Quite clearly the maintenance allolwances paid were revenue receipts. Hence that decision has no bearing on the question of law under consideration in the present case. The observations made by this Court in that decision must be read in the light of the facts of that case.

The decision of Mr. Justice' P. Jaganmohan Reddy (as he then was) in Kumara Rajah of Venkatagiri and ors. v. Income-tax Officer, A-Ward-Nellore and anr. (2) sitting singly proceeded on the basis that the ratio of the decision of this Court in Raja Rameshwar Rao's case is equally applicable to payments under s. 50(2) of the Act. The same view was taken by the judges of the High Court who rendered the decisions under appeal. For the reasons mentioned earlier both those decisions must be held to have proceeded on an erroneous view of the decision of this Court. On behalf of the Revenue, reliance was placed on the decision of this Court in Chandroji Rao v. Commissioner of Income-tax, Madhya Pradesh(3). To that decision both of us were parties. The question for decision in that case was whether ',he payments of interest made under s. 8(2) of the Madhya Bharat Abolition of Jagirs Act, 1951 was a Revenue receipt or a capital receipt. That section provided for the payment of interest on the compensation payable to the Jagirdars by the Government under s. 8(1) for resumption of their Jagir lands. 'Ms Court held that the receipt of interest under s. 8 (2) of that Act was a taxable (1) [1964] 2 S. C. R. 847.

(3) 77, I.T.R. 743.

(2) 64, I.T.R. 264.

3 33 income. The Court observed that there was a clear distinction between the compensation payable under s. 8(1) and the interest payable under sub-s. (2) of s. 8. The payment under s. 8(2) was given to the Jagirdar for his being kept out of the compensation amount to which he was entitled for a period of ten years and that it was not a payment for the acquisition of the Jagir. Therein the Court explained the distinction between the payment made for depriving the use of a money to which a person is entitled and that made for the destruction or taking away his pro- perty, the former being a revenue receipt and the latter a capital receipt.

For the reasons mentioned above these appeals are allowed. In those cases where the question of law mentioned earlier was referred to the High Court for its opinion, the answer given by the High Court is discharged and in its place we answer the question in favour of the assessee. So far as the writ petitions are concerned the order of the High Court is set aside, the writ petitions are allowed and the concerned Income-tax Officers are prohibited from including the interim payments received by the petitioner under s. 50(2) of the Act in his assessment. The appellants shall be entitled to their costs in these appeals both in this Court as well as in the High Court. In this Court only one hear- ing fee is allowed.

G.C. Appeals allowed.
3-L1340Sup CI/71