

(2010) 07 P&H CK 0234

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Sodhi Harbhajan Singh

RESPONDENT

Date of Decision: July 2, 2010**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1), 45
- Punjab Development of Damaged Areas Act, 1951 - Section 6(2)

Citation: (2010) 233 CTR 588 : (2011) 200 TAXMAN 149**Hon'ble Judges:** Ajay Kumar Mittal, J; A.K. Goel, J**Bench:** Division Bench

Judgement

Adarsh Kumar Goel, J.

The Income Tax Appellate Tribunal, Chandigarh Bench (in short "the Tribunal") has referred the following question of law for opinion of this Court u/s 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act") arising out of its order dt. 28th July, 1993 in ITA No. 1025/Chd/1986 for the asst. yr. 1980-81:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the capital gain could be taxed only in the assessment year relevant to the previous year in which the delivery of the possession of the property was given and not in the year in which the compensation was determined and the payment was received by the assessee ?

2. The assessee owned property which was acquired under the provisions of the Punjab Development of Damaged Areas Act, 1951 (in short "the Punjab Act"). The AO taxed the amount of capital gain by taking the transfer of property on 27th Aug., 1979 on which date the award of compensation was given. The assessee challenged this by submitting that date of transfer of property should be when possession was taken, i.e. on 21st April, 1971 and, therefore, in the asst. yr. 1980-81, no tax could be assessed as capital gain. The CIT(A) dismissed the appeal of the assessee. However,

the Tribunal upheld the contention of the assessee in the following terms:

We have considered the rival contentions and we find that the question of transfer of land shall have to be examined in the light of said enactment (the Punjab Act), under which the proceedings took place regarding acquisition of property. As we have already seen, the answer (sic-assessee) was divested of his right as soon as possession was taken. The market value was to be determined in the date of publication of the scheme by the improvement trust. Therefore, the payment of compensation under the award was not the deciding factor for determining the date of transfer because it was a case of compulsory acquisition and no conveyance was required to be executed. Under the scheme of the Punjab Act, the property was to vest absolutely in the improvement trust, after possession of the area as given to the trust. We, therefore, find force in the argument of the learned Counsel and hold that the transfer of property took place on the date of delivery of possession, namely, 21st April, 1971 and not on the date of award or the date of payment. Therefore, ground No. 2 is accepted and the orders of the Revenue authorities whereby a sum of Rs. 82,310 has been charged to tax, as capital gains, are cancelled to that extent.

3. We have heard learned Counsel for the Revenue. None appeared for the assessee.

4. Learned Counsel for the Revenue submitted that since the award was given by the Land Acquisition Collector on 27th Aug., 1979, that would be the date when the capital gain was exigible to Income Tax and the AO had rightly assessed the same in the asst. yr. 1980-81. Learned Counsel placed reliance on the judgments of Delhi High Court in CIT v. Ram Mohan Rai (HUF) (1993) 110 CTR 200 (Del) and Gauhati High Court in CIT v. Cachar Native Joint Stock Co. Ltd. (1997) 140 CTR 59 (Gau).

5. We do not find any merit in the contention of the learned Counsel for the Revenue.

6. Section 45 of the Act brings to tax any profits or gains arising from the transfer of a capital asset effected in the previous year. The following ingredients are required to be satisfied before the aforesaid provision is made applicable to an assessee:

(i) the assessee must own a capital asset;

(ii) the transfer of capital asset must take place during the previous year; and

(iii) profits and gains must accrue or arise from such transfer of capital asset to the assessee.

7. The land of the assessee was acquired under the Punjab Act. Section 6(2) of the Punjab Act is relevant and it reads as under:

6. Acquisition of damaged area through the Collector.-(1)....

(2) Notwithstanding anything contained in any other law for the time being in force, the Collector may accept the application made to him under the foregoing sub-section and forthwith deliver or cause to be delivered, to the trust possession of the damaged area for which the application has been made, and on such order being made, the area shall thenceforth vest absolutely in the trust free from all encumbrances but subject to the payment in due course of compensation by the trust in accordance with the provisions of this Act:

Provided that possession of any building or part of a building shall not be taken unless its occupier has been given at least two weeks¹ notice, or such longer notice as is considered reasonably sufficient to enable him to remove his movable property from such building without unnecessary inconvenience to himself.

8. A plain reading of the aforesaid provision makes it clear that on delivery of the possession, the land vests absolutely in the trust free from all encumbrances which is only subject to payment in due course of compensation by the trust in accordance with the provisions of the Punjab Act. The transfer of the property thus takes place on the delivery of possession by the landowner.

9. In view of the aforesaid clear provision, there is no doubt that the property in dispute was transferred to the improvement trust and absolutely vested in it on delivery of possession which took place on 21st April, 1971 and not on 27th Aug., 1979 when compensation was paid to the assessee.

10. Reliance of the learned Counsel on Cachar Native Joint Stock Co. Ltd.'s case (supra) does not advance the case of the Revenue. The Court therein was dealing with Assam Land (Requisition and Acquisition) Act, 1964, where there was no similar provision as Section 6(2) of the Punjab Act. Similar, is the position with regard to the judgment of the Delhi High Court in Ram Mohan Rai's case (supra).

11. Accordingly, the above question is answered against the Revenue and in favour of the assessee.