

(2004) 10 AHC CK 0170

Allahabad High Court

Case No: IT Ref. No. 105 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Smt. Azimunnisa Begum

RESPONDENT

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**Date of Decision:** Oct. 29, 2004**Acts Referred:**

- Income Tax Act, 1961 - Section 5

**Citation:** (2005) 194 CTR 72 : (2005) 277 ITR 48**Hon'ble Judges:** R.K. Agrawal, J; Prakash Krishna, J**Bench:** Division Bench**Advocate:** Shambhu Chopra, for the Appellant; Gaurav Mahajan, for the Respondent**Final Decision:** Disposed Of

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**Judgement**

1. The Tribunal, Allahabad, has referred the following question of law u/s 256(1) of the IT Act, 1961 (hereinafter referred to as the Act), for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the interest on the deposit falling to the share of the assessee accrued from year to year and, therefore, the entire interest of Rs. 1,98,238 was not liable to tax in the asst. yr. 1975-76 only?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The reference relates to the asst. yr. 1975-76. One Smt. Khatoon Bibi along with several other persons was owner of M/s Noori Sugar Factory. Smt. Khatoon Bibi has gone to Karachi in 1947 and the Asstt. Custodian, Evacuee Properties, had published a declaration that all the properties of Smt. Khatoon were evacuee property. On 20th March, 1956, the Competent Officer held that a share of 6 paise in the property in dispute belonged to Smt. Azimunnisa Begum (respondent) as the legal heir of Smt. Khatoon Bibi. There was a lot of litigation between the family members. In the intervening period, the property in dispute was sold on 30th Aug., 1956, for a sum of

Rs. 16,05,000. During the time the litigation was going on, the sale proceeds were kept by the Competent Officer in the Allahabad Bank. Initially the deposit was a short-term deposit for one month carrying interest @ 3 per cent per annum which was renewed from time to time. Interest was also invested in the short-term deposit. At the end of June, 1974, the amount of deposit consisting principal and interest amounted to Rs. 24,77,008.

3. It appears that the respondent along with other persons had challenged action of the Asstt. Custodian in declaring the property as evacuee property including the validity of the UP Administration of Evacuees Property Ordinance (1 of 1949) and the Government of India (Third Amendment) Act. Having failed in this Court, the matter was taken up before the apex Court and it was decided on 25th Oct., 1960, upholding the action of the Asstt. Custodian. The decision is reported in [Azimunissa and Others Vs. The Deputy Custodian, Evacuee Properties, District Deoria and Others](#), . The respondent-assessee received the principal amount and the interest of Rs. 1,98,238 which related to the period 1956 to 31st July, 1973. The ITO treated the entire amount of interest as income of the respondent-assessee during the asst. yr. 1975-76.

4. In the appeal filed by the respondent-assessee before the CIT(A), the plea taken by the respondent-assessee that the interest had accrued from year to year, therefore, the entire amount could not have been taxed in the asst. yr. 1975-76, was accepted. Revenue's appeal before the Tribunal on this point has failed. However, the Tribunal has directed the ITO to compute the amount of interest relatable to the asst. yr. 1975-76.

5. We have heard Shri Shambhu Chopra, the learned standing counsel for the Revenue, and Shri Gaurav Mahajan who appears for the respondent-assessee. The Tribunal while holding, the amount of interest to have accrued during every year has held as follows:

"There was at no stage any doubt that the amount of deposit did not belong to the Competent Authority, but that it belonged to the owners of Noori Sugar Factory. The Competent Authority was only acting as an agent of these owners, of which the assessee was also one. The interest on the amount of the deposit with the bank also, therefore, accrued to the owners, including the assessee and not to the Competent Authority. There was also no order of the Court prohibiting the payment to the owners of the sugar factory, as was found in the case [RANI BHAWANI DEVI Vs. COMMISSIONER OF Income Tax, U.P.](#), , a decision of the Allahabad High Court relied upon by the CIT(A). The interest, therefore, accrued to the owners as and when it was made payable by the bank and was credited to the deposit account. The decisions of the High Court and Supreme Court did not affect this accrual or ownership of the interest, as they were dealing only with the competency of the custodian to sell the property.

We also do not think that merely because a compromise had been arrived at between the members of the family, including the assessee, the accrual of the interest could be said to have been left in abeyance. The interest continued to accrue from year to year and then it became payable by the bank to the owner of the deposit. The only thing which was not certain, was the share of the assessee in that deposit, which was finally settled as per the compromise in 1974. The assessee was therefore, entitled to the receipt of the interest as and when it became payable by the bank in different earlier years. It cannot be said that the entire interest of Rs. 1,98,238 became taxable only in the year in which it was received by her. Admittedly, she was not maintaining any books of account. The question of following any method of accounting by her, therefore, did not arise. It was neither mercantile nor cash and, therefore, the receipt of the interest by itself did not make it taxable in her hands. She became liable to tax on the interest as and when it accrued to her and became payable to her, whether paid or not by the bank."

6. On the findings recorded by the Tribunal we are of the considered opinion that the interest in question accrued year to year as the bank has credited the amount of interest in respective account. In this view of the matter, we answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue.

However, there shall be no order as to costs.