

(2001) 06 CAL CK 0028

Calcutta High Court

Case No: IT Reference No. 33 of 1995 13 June 2001

Commissioner of Income Tax

APPELLANT

Vs

Estate Mineral Development Co.
(P) Ltd.

RESPONDENT

Date of Decision: June 13, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 256(1)

Citation: (2001) 118 TAXMAN 551

Hon'ble Judges: Y.R. Meena, J; Meena, J; Malay Kumar Basu, J

Bench: Full Bench

Advocate: Agarwal, for the Revenue, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

On an application u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Capital Gain, if any, arising from the acquisition of the assessee's land is not assessable in the assessment year 1965-66 ?"

2. The assessee is Estate Mineral Development Co. (P) Ltd. and the assessment year under reference is 1965-66.

3. The original assessment in this case was completed u/s 143(3) of the Act, on 30-6-1987. Subsequently, the assessment was reopened u/s 147(a) of the Act on the material information in possession of the assessing officer that the assessee has received the compensation of Rs. 8,23,188 from the Government of Orissa. The assessee has claimed that this amount is not taxable. The claim of the assessee was rejected. The amount of compensation was taxed as capital gains (short-term) on the ground that the assessee purchased the land in question in 1963 and a

notification u/s 4 of the Land Acquisition Act has been issued for acquisition of this land on 8-4-1964. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) found that the land has not been transferred in the accounting year relevant to the assessment year 1965-66. Therefore, that amount of compensation cannot be taxed in the assessment year 1965-66. In appeal before the Tribunal, the Tribunal has endorsed the view taken by the Commissioner (Appeals).

4. None appeared for the assessee. Heard the learned counsel for the revenue. Mr. Agarwal submits that though for the purpose of business the accounting year ended on 31-12-1964, the assessee had not opted the separate accounting year for capital gain tax, therefore, for this purpose the year ending is 31-3-1965. Thus, the amount of compensation can be taxed as capital gain in the assessment year 1965-66.

5. The facts are not in dispute that the assessee has purchased the land in question in 1963 for Rs. 32,000. A notification u/s 4 of the Land Acquisition Act has been issued on 8-4-1964 but the land is vested and possession has been taken on 24-3-1965.

6. The limited controversy before us is whether for the purpose of capital gain tax the accounting year relevant to the assessment year 1965-66 should be taken as 31-12-1964 or 31-3-1965. Section 3 defines the previous year, i.e., accounting year. Sub-section (3) of section 3 gives the liberty to the assessee that assessee may have different previous year in respect of a separate source of his income. Admittedly, the assessee has opted 31-12-1964 as year ending i.e., ending of the previous year. The assessee never claimed that for the purpose of capital gain the year ending will be 31-3-1965. The option is with the assessee and not with the department. Once the assessee has opted his previous year as calendar year ended on 31-3-1964, no capital gain can be taxed, on account of the land transferred or vested in the government after the end of the accounting year.

7. In view of the facts referred in the judgment and on record, we find no reason to interfere with the order of the Tribunal.

8. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

9. The reference application, thus, stands disposed of.